IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (C) NO. _____ OF 2023

[Arising from the Impugned Judgment and Final Order dated 30.09.2022 in Contempt Petition No. 2 of 2020 passed by the Hon'ble High Court of Bombay at Goa]

[**WIH PRAYER FOR INTERIM RELIEF**]

IN THE MATTER OF:

THE GOA FOUNDATION PETITIONER

VERSUS

SHRI PARIMAL RAI & ORS. RESPONDENTS

WITH

I.A. NO. OF 2023: Application for permission to f
additional documents.

PAPER-BOOK

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ADVOCATE FOR THE PETITIONER: NUPUR KUMAR

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IN THE SUPREME COURT OF INDIA
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SPECIAL LEAVE PETITION (C) NO. OF 2023

IN THE MATTER OF:

THE GOA FOUNDATION PETITIONER

VERSUS

SHRI PARIMAL RAI & ORS. RESPONDENTS

OFFICE REPORT ON LIMITATION

1. The Petition is within time.

2. The Petition is barred by time and there is delay of _____ days in filing the same against final order dated 30.09.2022 petition for condonation of _____ days delay has been filed.

3. There is delay of _____ day in re-filing the petition and petition for condonation of_____ days delay in re-filing has been filed.

FILED ON: 05.01.2023

(BRANCH OFFICER)

A1

PROFORMA FOR FIRST LISTING

SECTION:

This case pertains to (Please tick/ check the correct box):

☐	Central Act: (Title)	**Contempt of Courts Act**
☐	Section :	
☐	Central Rule : (Title)	……N.A.
☐	Rule No(s)	……..N.A.
☐	State Act: (Title)	……N.A.
☐	Section :	……N.A.
☐	State Rule : (Title)	……N.A.
☐	Rule No(s):	……N.A.
☐	Impugned Interim Order : (Date)	……N.A
☐	Impugned Final Order /Decree : (Date)	**30.09.2022**
☐	High Court : (Name)	**High Court of Bombay at Goa**
☐	Names of Judge(s):	**Hon'ble Mr. Justice G. S. Kulkarni** **Hon'ble Mr. Justice Bharat P. Deshpande**
☐	Tribunal/Authority : (Name)	……N.A.

1.	Nature of the matter	**CIVIL**
2.	a) Petitioner/Appellant No.1.	The Goa Foundation
	b) Email I.D.	……N.A.
	c) Mobile phone number:	……N.A.
3.	a) Respondent No.	Shri Parimal Rai & Ors.
	b) Email I.D.	N/A
	c) Mobile phone number:	N/A
4.	a) Main category classification	014
	b) Sub classification :	1418
5.	Not to be listed before:	-N.A.-
6(a).	Similar disposed of matter with citation, if any and case Details	No similar disposed of matter

6(b).	Similar pending matter with case details	No similar pending matter
7.	**Criminal Matters**:	
	a) Whether accused /convict has surrendered:	……....N.A.
	b) FIR No. Date	**……...N.A.**
	c) Police Station:	**……...N.A.**
	d) Sentenced awarded	……...N.A.
	e Period of Sentence undergone including period of detention/ custody undertaken:	**……..N.A.**
8.	**Land Acquisition Matters:**	…...……N/A
	a) Date of Section 4 notification :	…...……N/A
	b) Date of Section 6 notification :	…...……N/A
	c) Date of Section 17 notification	…...……N/A
9.	**Tax Matters**: State the Tax effect:	…...……N/A

10. **Special Category**: (first petitioner/ appellant only):
☐ Senior citizen > 65 years ☐ SC/ST ☐ Woman /child
☐ Disabled ☐ Legal ☐ Aid case ☐ in custody

11. Vehicle Number (in case of Motor Accident Claim matters) : **N/A**

Date 05.01.2023

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SYNOPSIS

This Petition for Special Leave is being filed seeking leave to appeal against the final judgment and order dated 30th September 2022 passed by the Hon'ble High Court of Bombay at Goa in Contempt Petition No. 2/2020 in PIL WP 26/2017 ("**Impugned Order**") by which the Contempt Petition filed by the Petitioner was dismissed and the Petitioner penalized with costs, despite the fact that contempt was and is still continuing and despite the fact that the Court itself in its judgment in PIL WP 26/2017 had directed contempt action to be taken in case of non-compliance with its directions, which directions were not complied with.

The Petitioner, a well-known and serious environmental organization registered and located in the state of Goa, had filed a Contempt Petition (CP) drawing to the attention of the Hon'ble High Court that specific directions issued by it in two separate judgments for removal of offending construction on the public Gaspar Dias beach in Panaji city, erected in violation of the CRZ notification had not been carried out within stipulated date by the authorities named in the judgment and which were made Respondents to the Contempt Petition.

The CP had been filed not only for ensuring action from the authorities, but because the High Court itself had directed non-compliance or resistance to carrying out such action of removal of offending structures would be treated as contempt.

It was the Petitioner's case that the delay in implementing the directions of the Hon'ble High Court was wilful, intentional and deliberate, since efforts had clearly been made to create a new situation to justify jettisoning the considered directions of the Hon'ble High Court. The original writ petition was filed in 1993. The first judgment allowing all

the challenges raised by the Petitioner was pronounced in 2015. The first judgment was not appealed and had achieved finality.

As the directions in the first judgment were not complied with by the Goa Coastal Zone Management Authority ("**GCZMA**") in collusion with the influential resort owners, a second PIL namely PIL/WP 26/2017 was filed before the High Court leading to a second judgment which was passed in the year 2018.

In its second judgment, the Hon'ble High Court ousted the GCZMA from further interference in the matter since the body showed itself to be unwilling to implement the Court's order as it continued to be wholly in collusion with the Respondent hotel. The Hon'ble High Court in second judgment issued a specific direction directing the National Centre for Sustainable Coastal Management ("**NCSCM**"), India's premier body and expert on coastal ecosystems, to visit the site, mark the High Tide Line and file a report which would clearly identify the constructions which were to be demolished as per direction No. 1 of the judgment dated 2015 and direction No. 1 of the judgment dated 2018.

The second judgment and order was challenged by the Respondent Hotel by way of a SLP filed in this Hon'ble Court, which was dismissed, which therefore also attained finality.

The NCSCM submitted its report clearly identifying three structures within the prohibited zone marked out in the first judgment and followed by the second. These included part of the swimming pool, a hut and a large illegal compound wall constructed across the beach, which enclosed part of the public beach, for the exclusive use of the hotel. The illegal constructions were clearly demarcated on a plan prepared by the NCSCM.

The Hon'ble High Court had by the second judgment directed that once the NCSCM report was available, the directions for removal of offending structures would be carried out within 4 weeks thereafter.

The Hon'ble High Court also directed that any violation of the above directions would be viewed seriously and treated as contempt of the order of the Court.

Conscious of these directions, and upon finding that the constructions had not been demolished and that the GCZMA was once again frustrating the Hon'ble High Court's orders with delaying tactics, the Petitioner filed Contempt Petition No.2/2020 (the said CP) of which the Hon'ble Court took cognizance. Time was repeatedly sought by the authorities for ensuring compliance with the Hon'ble Court's directions and thus two years passed before the matter could be finally heard.

The CP was finally taken up by the Hon'ble High Court for hearing on 30th September 2022 when it passed the impugned order. In the said order the High Court held that the contempt application was "*an abuse of the process of law*." Accordingly, it dismissed the Contempt Petition with exemplary cost of Rs.50,000 payable by the Petitioner within two weeks of the order being made available. Meanwhile, the illegal wall required to be demolished by the order of the Hon'ble High Court, which order was left untouched by the Supreme Court in a specific challenge filed by the Respondent hotel, remains intact, defeating the very purpose of two High Court judgments which sought to restore the area enclosed by the wall to free access of the public. Aggrieved by the wholly unjust, unwarranted and arbitrary order, this SLP has been filed.

LIST OF DATES AND EVENTS

DATE	PARTICULARS
1993	Petitioner filed WP No.333/1993 challenging approvals granted for construction of a resort by Palm Hotels (now franchised to Marriott Hotels) in violation of the CRZ Notification 1991 on the Gaspar Dias beach of Panaji. The construction was then at its primary stage. Interim stay was refused based on the incorrect affidavit of the state government that the area did not fall within the CRZ.
29.06.2015	The Petition was heard after two decades. The Hon'ble High Court at Goa allowed WP No.333/1993 and set aside the approvals granted as it found that these were granted in violation of the CRZ notification, 1991. All contentions raised in reply by the Respondent Hotel were repelled. The judgment also directed costs to be paid to Petitioner (hereinafter, "Marriott Judgment I"). True copy of the judgment dated 29.06.2015 passed by the Hon'ble High Court of Bombay at Goa in WP No.333/1993 is annexed and marked as **ANNEXURE P-1 [Pg No. 66-132]**
September 2015	A Review Petition was belatedly filed by the Respondent hotel. It brought up issues of swimming pool being permissible and presence of collapsed old retaining wall (now broken and lying abandoned in the river) as

	grounds for overturning of the judgment dated 29.06.2015.
30.06.2016	The Review petition was dismissed, hereafter "Marriott judgment II." Thus, one full year had passed without order being implemented. True copy of the judgment dated 30.6.2016 passed by the Hon'ble High Court of Bombay at Goa in Misc. Civil Application No. 898 of 2015 in Stamp No. (Application) No. 2544 of 2015 annexed and marked as **ANNEXURE P-2** **[Pg No. 133-139]**
March 2016	The GCZMA filed a report produced by a Special Committee of 7 persons, who concluded that no constructions are required to be demolished. The basis of the report was that the High Tide Line is located *in the water* (and not on land, as required by the CRZ notification), hence it concluded no demolition was called for. This is despite the *prima facie* finding of the Hon'ble High Court at para 34 of its first judgment (Marriott I).
24.10.2016	On an Application No.274/2016 filed by the Petitioner in WP.333/1993, the Hon'ble High Court sets aside the first report of the GCZMA (hereinafter "Marriott judgment III"). The Hon'ble High Court again directed the GCZMA to implement the directions of 29.06.2015 within 3 months. True copy of the judgment and final order dated 24.10.2016 passed by the Hon'ble High Court of Bombay at Goa in Misc. Civil Application

	No.274/2016 in Writ Petition No. 333 of 1993 is annexed and marked as **ANNEXURE P-3 [Pg 140-144].**
2017	As the Hon'ble High Court's order was not carried out within time granted, this Petitioner filed the first Contempt Petition (No.27/2017).
01.08.2017	The GCZMA produced a second report, which brazenly again showed/located the HTL within the river (and not on land), and thus concluded that no constrictions were required to be demolished. The report was based on calculations of erosion of the beach in the area that had occurred over the past around four decades.
21.8.2017	The Hon'ble High Court disposed of the CP and miscellaneous applications filed in separate orders wherein it: a) noted that a compliance report (second report) had now been filed, which the Petitioner was aggrieved by; b) granted liberty to the Petitioner to challenge the second report in a fresh proceeding c) directed the payment of costs to Petitioner as per judgment in Writ Petition No.333.
August 2017	The Petitioner filed PIL WP No.26/2017 challenging the second report of the GCZMA, being a colourable exercise of power, specifically to protect the hotel's constructions.
24.08.2018	Three years after the first judgment is passed in 2015, the Hon'ble High Court passed a detailed second judgment

	in PIL/WP 26/2017 setting aside the GCZMA's second report (hereinafter, "Marriott judgment IV") and rejecting any attempt to import the issue of erosion as a ground for saving the respondent hotel's CRZ violations. After examining the contentions raised, and distraught at the "*malice in law*" displayed by the GCZMA, the Hon'ble High Court allowed the Petition and issued fresh directions for compliance with Direction No 1 of the 2015 judgment, within a time-bound period. Disturbed with the subversion of its directions by the GCZMA, the Hon'ble High Court literally divested the GCZMA of any further involvement in the matter. Instead, it appointed the NCSCM to demarcate the area between the high tide line (after marking it) and the imaginary line parallel to the high tide line within which the offending structures had to be removed. The Hon'ble Court further directed that action on the NCSCM report would be taken within 4 weeks of receipt of the report. True copy of the judgment dated 24.08.2018 passed by the Hon'ble High Court of Bombay at Goa in PIL W.P. No. 26/2017 is annexed and marked as **ANNEXURE P-4 [Pg No. 145-212]**
11.01.2019	The Respondent hotel's SLP against the judgment dated 24.08.2018 was dismissed, with the order indicating that the Respondent hotel had the opportunity to present its case before the NCSCM. True copy of the order dated 11.01.2019 passed by this Hon'ble Court in SLP (C) No.

	33743 of 2018 is annexed and marked as **ANNEXURE P-5 [Pg No. 213-214]** Respondent hotel presented before NCSCM. It again added the issue of beach erosion in its submissions.
21.08.2019	Another year passes before the NCSCM finally submitted its report to the Goa authorities. In the report, it identified the portions of the swimming pool, the hut and the retaining wall constructed within the imaginary line to be demolished as per Hon'ble High Court's judgment. It also rejected the arguments about erosion of beach.
19.09.2019	In order to pre-empt implementation of the High Court's order which was now inevitable, and to delay the demolition as 4 weeks were over, the GCZMA moved to issue a notice under section 5 of the EPA, 1986 to the hotel owners and the Petitioner on findings of the CRZ violations found in the NCSCM report. This course of action was clearly uncalled for, since the Court's directions did not require such notice or consultation. It bears repeating that the matter had been thoroughly heard and two judgments passed on two earlier occasions.
27.9.2019/ 1.10.2019	Resort owner responded to the GCZMA asking for "clarifications." The GCZMA issued a clarification on 3.10.2019 identifying the structures. The Hotel sought further time to reply. GCZMA on cue grants further

	time, despite the time limit for demolition already laid down by the Court in its order dated 24.08.2018.
02.11.2019	The Petitioner wrote to the Chief Secretary (Contemnor No.1) representing all state authorities, drawing his attention to the breach of the High Court's direction to implement the NCSCM report findings and that if no action was taken, contempt petition was bound to be filed in terms of para 93(h) of the High Court's judgment of 2018.
11.12.2019	The GCZMA issued a notice of personal hearing to the resort owner and the Petitioner and for a hearing even though the High Court's directions were clear.
18.12.2019	The Petitioner appeared before the GCZMA and submitted a letter stating that the GCZMA ought not to meddle with the matter, as the time for compliance was already decided and moreover that Hon'ble High Court had already expressed total lack of confidence in the body as far as this specific issue was concerned. The Respondent hotel claimed it was still unclear about the nature of structures to be removed. The resort owner introduced reference to direction 37(ii) of the original judgment dated 29.06.2015, claiming the direction must be taken into account in case demolition of the wall is to be taken up. Taking up this argument, and wholly unmindful of the High Court's clear directions to act on the basis of the NCSCM report, the GCZMA took a decision to ask the Water Resources

	Department if demolition of the wall would affect the erosion of the beach, thus raising all over again an issue already settled by the second judgment and by the NCSCM after it had heard the hotel owner. The GCZMA meeting also recorded that the Director of the Petitioner (Goa Foundation) left the meeting after informing it that it ought not to interfere in implementation of the High Court's order.
31.12.2019	GCZMA wrote to the Dept. of Survey & Land Records to mark the offending structures for demolition as per the NCSCM report. It also wrote to the Water Resources Department (a Goa government department) enquiring whether the demolition would contribute to the erosion on the beach. No leave was sought from the Court for initiating these new enquiries aimed at raising doubts about implementing the Court's directions.
3.02.2020	Panchanama was conducted by GCZMA and offending portions of all three structures including swimming pool, hut and compound wall violating CRZ were identified and their extent marked on ground and map. True copy of the Panchanama dated 03.02.2020 is annexed and marked as **ANNEXURE P-6 [Pg No. 215-216]**
15.01.2020	Contempt Petition (No.2/2020) was filed by the Petitioner in desperation on the ground that all the 3 structures that were yet to be demolished, relying on para 93(h) of the judgment dated 24.08.2018. The Hon'ble Court took cognizance andissued notice before

	admission to the Respondents. True copy of the Contempt Petition No. 2 of 2020 filed by the Petitioner before the Hon'ble High Court of Bombay at Goa dated 15.01.2020 is annexed and marked as **ANNEXURE P-7 [Pg No. 217-239]**
28.1.2020/ 29.01.2020	The Respondent Hotel owner pleaded for two weeks' time to place on record "the technical report of an engineer which would enable the authority to know and understand that in case the demolition takes place, the possibility of the entire hotel getting demolished on its own due to erosion of the sand soil cannot be ruled out."
30.1.2020	Demolition order was finally issued but for only for two of the three structures. The GCZMA unilaterally decided that the demolition of the third structure would only be considered after receipt of the report of the WRD.
12.2.2020	Within two weeks of the GCZMA decision, as if on cue, WRD produced an interim report questioning the demolition of the offending wall on grounds of erosion of the beach as a consequence.
11.03.2020	GCZMA discharged its show cause notice for demolition of the compound wall despite the direction of the Hon'ble High Court and despite the NCSCM report. True copy of the proceedings dated 11.03.2020 before the GCZMA which recorded that the GCZMA hearings and decisions relating to *de facto* cancellation of the

	High Court's direction is annexed and marked as **<u>ANNEXURE P-8</u> [Pg No. 240-256]**
18.03.2020	GCZMA now decided to await the final report of the CWPRS/WRD to take a final call on the retaining wall. 5 years had passed since the first judgment in 2015, two years since the judgment in 2018.
12.05.2020	Panchanama finally recorded that the two illegal structures (swimming pool and hut) were finally demolished. No further action was taken on the third violation. However, the matter continued to engage the attention of the Hon'ble High Court.
16.9.2020	WRD submits a report of the Central Water and Power Research Station (CWPRS) on Marriott hotel beach front to GCZMA. The costs of the report were picked up by the Respondent hotel. As expected the report repeated the allegation that removal of the wall may lead to erosion of the beach.
5.11.2020	GCZMA called for further hearings on the CWPRS report.
10.12.2020	Counsel for the Petitioner appeared before the GCZMA and represented thatthe proceedings before the High Court are contempt proceedings and steps must be taken to restore the beach by removal of the compound wall. She filed written submissions in this regard.
20.01.2021	The director of the Goa Foundation appeared before the GCZMA to inform it that the authority was in contempt

	of the High Court's orders by its conduct. Respondent hotel owner now argued that the High Court's order did not require demolition of the wall despite the finding at p.34 of the 2015 judgment. After this appearance, Petitioner decided not to participate in the continuing proceedings intended to delay and frustrate the High Court's orders.
30.09.2021	GCZMA decided, without moving the High Court that the retaining wall should be left in the present condition and should be properly maintained, despite Court's directions. Chief Secretary filed an affidavit informing the High Court that he had accepted GCZMA's decision, but concludes his affidavit stating the wall would be demolished if fresh direction was issued to this effect by the High Court. This decision was decidedly contrary to the order of the High Court dated 24.08.2018 which was to be implemented as per the report of the NCSCM. That order was in fact appealed before this Hon'ble Court which refused to entertain the SLP. Hence the order of the High Court dated 24.08.2018 was final and had to be obeyed. True copy of the affidavit dated 30.09.2021 filed by the Chief Secretary, Government of Goa filed in Contempt Petition No. 2/ 2020 is annexed and marked as **ANNEXURE P-9 [Pg No. 257-265]**
07.4.2022	The Hon'ble High Court, after hearing the matter (the Contempt Petition) for a full day, directed the Petitioner to make the hotel owner a party Respondent in the

	contempt proceedings at the request of the party concerned. True copy of the order dated 07.04.2022 passed by the Hon'ble High Court of Bombay at Goa in Contempt Petition No. 2 of 2020 is annexed and marked as **ANNEXURE P-10 [Pg No. 266-272]**
19.5.2022	The Respondent hotel filed a MCA for permission to keep the retaining wall. No such order had been passed till date, but the MCA stood disposed of.
13.06.2022	The Petitioner filed MCA to bring on record new persons in the cause list of Respondents as the officers of the Respondents have changed or retired, and as the contempt was continuing. True copy of the Misc. Civil Application No.150/2022 filed before the Hon`ble High Court of Judicature of Bombay at Porvorim, Goa dated 13.06.2022 is annexed and marked as **ANNEXURE P-11 [Pg No. 273-281]**
29.09.2022	True copy of Additional Misc. Civil Application No.2119/2022 filed before the Hon`ble High Court of Judicature of Bombay at Porvorim, Goa dated 29.09.2022 (F) for additional parties is annexed herewith and marked as **ANNEXURE P-12 [Pg No. 282-289]**
30.09.2022	The Impugned Order is passed, dismissing the contempt petition with costs of Rs.50,000, and accusing the Petitioner of "abuse of the process of law." Only 2 weeks' time was granted to

	the Petitioner to deposit the penalty amount, which was deposited by the Petitioner under protest.
05.01.2023	Hence, the present Special Leave Petition

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO. 2 OF 2020
IN
PIL WRIT PETITION NO. 26 OF 2017
WITH
MISC. CIVIL APPLICATION NOS. 150 OF 2022,
64 OF 2020, 198 OF 2022 AND 2119 OF 2022 (F)
IN
CONTEMPT PETITION NO. 2 OF 2020

THE GOA FOUNDATION, THR. ITS SECRETARY, DR. CLAUDE ALVARES ... PETITIONER

VS

PARIMAL RAI, OFFICE OF THE CHIEF SECRETARY AND 3 ORS. ... RESPONDENTS

******

Ms. Norma Alvares with Mr. Om D'Costa, Advocates for the Petitioner/Applicant.

Mr. S.D. Lotlikar, Senior Advocate with Mr. Deep Shirodkar, Additional Government Advocate for Respondent Nos. 1, 2 and 3 in CP No. 2/2020.

Mr. S.R. Rivankar, Senior Advocate with Mr. Rama Rivankar and Ms. Nishita Rivankar, Advocates for Respondent No. 3 in MCA No. 150/2022.

Mr. Nitin Sardessai, Senior Advocate with Mr. Ashwin D. Bhobe, Mr. Jitendra P. Supekar, Mr. Sufiyan Sayed, Mr. Roger D'Souza, Mr. Shivam Phadte, Mr. Kabir Sabnis and Ms. Gautami Kamat, Advocates for Respondent No. 4.

HIGH COURT OF BOMBAY AT GOA
सत्यमेव जयते
PORVORIM-GOA

CORAM: G.S. KULKARNI &
BHARAT P. DESHPANDE, JJ.

DATED: 30 SEPTEMBER 2022

ORAL ORDER: (per G.S. Kulkarni, J.)

1. This is a Contempt Petition whereby the petitioner has alleged contempt of an order dated 24 August 2018 passed by the co-ordinate Bench of this Court in disposing of PIL Writ Petition No. 26/2017. At the outset, we need to refer to the operative directions of the said order passed by this Court and more particularly, to direction no. 2(f) of which contempt is alleged. The said directions reads thus:

> *"93. In view of the above discussions, we dispose of the Writ Petition by following directions :*
>
> *(I) The impugned decision of the GCZMA in the meeting dated 1 August 2017 accepting the Second Report and the Second Report filed by the GCZMA, are quashed and set aside;*
>
> *(II) (a) The Authorities shall, within three weeks from today, approach the National Centre for Sustainable Coastal Management, Chennai in respect of the paragraphs 37(i) of the Judgment and Order dated 29 June 2015 in Writ Petition No.333 of 1993;*
>
> *(b) The NCSCM is requested to submit an estimate of costs to the Authorities within a period of three weeks from the date of receipt of the proposal from the Authorities*

(c) After the estimate of costs is received from the NCSCM, the Authorities will forthwith call upon the Respondent No.3-Hotel to make payment of costs estimated by the NCSCM, directly to the NCSCM, within a period of three weeks.

(d) The NCSCM will carry out the exercise as indicated in paragraph 37(i) of the Judgment and Order dated 29 June 2015, within a period of four months thereafter and prepare a report.

(e) It is open for the NCSCM to proceed to carry out the exercise without waiting for the tender of costs by the Respondent No.3-Hotel.

(f) After the exercise is so completed by the NCSCM, the Authorities, based on such conclusions arrived at by the NCSCM will take necessary action against the Respondent No.3-Hotel in respect of an area which is found to be in violation of the CRZ Notification of 1991, within a period of four weeks.

(g) The Authorities and the Respondent No.3 Hotel shall supply all the necessary documents and information to the NCSCM as and when required for the purpose of carrying out the exercise.

(h) Any violation of the above directions both, by the Authorities and the Respondent No.3-Hotel, will be viewed seriously and will be treated as a contempt of the order of this Court.

(i)The above directions shall be read along with the observations made by us in this Judgment.

(III) The Respondents-Authorities shall take necessary steps forthwith to ensure that the beach in question is made accessible to the general public."

(emphasis added)

2. The public interest litigation in question on which the above directions were made by this Court had some antecedents. The petitioner had earlier approached this Court in Writ Petition No. 333/1993 making a grievance that a hotel named 'Goa Marriott Resort' owned by respondent no. 4 (for short "the hotel) located near the Gaspar Dias Beach at Panaji, had breached the Coastal Regulation Zone (CRZ) restrictions. We need not delve in respect of the other details of the said petition, suffice it to state that the said Petition came to be disposed of by the co-ordinate Bench of this Court vide judgment and order dated 29 June 2015, whereby this Court directed the authorities to draw a line parallel to the High Tide Line (HTL) from a light house, a structure nearby. The authorities were to determine whether any construction of the hotel fell towards the river side of this line, after which to take necessary action against the hotel. The State of Goa was directed to take all measures to prevent the erosion of the sand bank and siltation of the river. The hotel was directed to remove the obstructions to the access of the public to the beach. The operative directions of the Court in Writ Petition No. 333/1993 read thus:

> *"37. In view of the above, we pass the following order:-*
>
> *(i) The respondent nos. 1 to 4 or any other designated competent authority shall proceed to examine whether any of the construction activities carried out by the*

BOMBAY AT GOA
M-GOA

respondent no.7 comes towards the river side of the imaginary line to be drawn from the Light House shown in the plan of the Court Commissioner parallel to the High Tide Line in the manner as stated herein above and thereafter proceed to take necessary action against the respondent no.7 for restoring such area in accordance with law within six months from today.

(ii) The respondent no. 2 shall take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of the respondent nos.7 and 9.

(iii) The respondent nos.7 and 9 shall not obstruct the access of the public to the subject beach through the said reserved path and the respondent no.2 shall take all measures to make such path accessible to the said beach in accordance with law.

(iv) Rule is made absolute in the above terms.

(v) The petition stands disposed of accordingly with costs.

(emphasis added)

3. On the ground that the above directions as made by the Division Bench were circumvented, the petitioner filed the said second petition (PIL Writ Petition No. 26/2017), in which, the directions as noted in paragraph 1 above were made. By these directions, the authorities were directed to approach the National Centre for Sustainable Coastal Management, Chennai (NCSCM) in respect of paragraph 37(i) of the judgment of the Division Bench

in Writ Petition No. 333/1993 to carry out the exercise as directed in terms of paragraph 37(i) of the said judgment.

4. It so transpired that after the orders were passed in PIL Writ Petition No. 26/2017, the NCSCM in accordance with the directions of this Court prepared a report on the basis of survey and mapping exercise carried out by it to examine whether any construction activity by the said hotel comes to the riverside up to the imaginary line from the lighthouse shown on the plan of the Court Commissioner parallel to the HTL. Such report is dated 10 September 2020. The report in paragraph 7.0 observed thus:

> *7.0 Observations of NCSCM:*
>
> *1. As per the results of the survey and mapping exercise carried out by NCSCM, it is seen that the HTL of 1991 demarcated by NCSCM coincides with the remnants of the collapsed retaining/parapet wall. The HTL of 1991 and the remnants seen on the ground of the collapsed retaining wall are depicted in the said map, (Fig-1), along with the existing retaining wall, among other details.*
>
> *2. As per the enclosed detailed signed map on 1:1000 scale, depicting the imaginary line drawn from the lighthouse shown in the plan of the court commissioner, parallel to the High Tide Line of 1991, the structures (in the hotel Goa Marriott resort project in question) which fall on the river side of the imaginary line are:*

Parts of swimming pool, Hut and the existing retaining wall.

3. The distance between the Light house (depicted in the Court commissioner's report) and the High Tide Line of 1991 is 19 m.

4. The imaginary line was drawn at a distance of 19 m from the High Tide Line of 1991, towards the landward side.

5. The distance between the western facade of the Youth hostel and the High Tide Line of 1991 is 38m.

6. The distance of the Hotel Goa Marriott resort's extreme most projecting sections/towards the river from the High Tide Line are 24m in the north, 34m in the middle and 23m in the south.

7. ***The structures (in the Hotel Goa Marriott resort project in question) which fall on the river side of the said imaginary line are parts of the swimming pool, hut and the existing retaining wall.***

8. The project area/the project in question falls under the CRZ II category.

9. The distances of the structures (in the Goa Marriott hotel resort project in question) which fall on the said imaginary line (within the 19m buffer) on the river side, from the HTL of 1991, are given below:

Sl.No.	*Points on the structures*	*Distance from the HTL of 1991*
1	*Existing Retaining Wall (P1)*	*7.5 m*
2	*Hut (P2)*	*15 m*
3	*North west corner of swimming pool (P3)*	*14.0 m*
4	*Swimming pool middle point facing river side (P4)*	*16.5 m*

5	*Swimming pool south west point (P5)*	*15 m*

(emphasis supplied)

5. Thus, the case of the petitioner is that in the said report, as part of the swimming pool, hut, and the existing retaining wall were categorised as structures, which falls on the river side of the imaginary line, hence, such observations were directly hit by the directions of the Division Bench as contained in clause (II)(f) of paragraph 93 as noted above, and qua these structures the authorities were required to take necessary action of demolition against the hotel. It is the petitioner's case that since the NCSCM had so concluded, it was incumbent for the "Authorities" based on such a conclusion to take necessary action against the hotel in respect of an area, which according to the petitioner was found to be in violation of CRZ notification of 1991 within a period of four weeks. In other words, the petitioner contends that the part of the swimming pool, hut, and the existing retaining wall was required to be demolished within four weeks from the NCSCM making such a report and an action having not being taken in respect of these structures, the authorities are in contempt of the directions as contained in paragraph 93(II)(f) of order dated 24 August 2018 (supra). It is for such reason, the present contempt petition was filed.

6. It appears that after the report was made, action was taken insofar as the part of the hut and the swimming pool are concerned as it is stated that they were removed on 16 March 2020 and 8 May 2020 respectively. The learned Counsel for the petitioner would not dispute this position. Thus, the only issue that has been canvassed and falls for consideration is as to whether there is any intentional breach of the orders passed by this Court, concerning the existing retaining wall. Such issue, in the context of contempt powers, whether be exercised against the respondents who are arrayed as contemnors has been the subject matter of a contest between the petitioner and the respondents.

7. Before we embark on the submissions as made by the learned Counsel for the parties, we note as to who are arrayed to be the contemnors. Respondent no. 1 is arrayed in his capacity as the "Chief Secretary" of the State of Goa. Respondent no. 2 is the "Secretary of Environment". Respondent no. 3 is the "Member Secretary" of the Goa Coastal Zone Management Authority (for short, GCZMA). It needs to be noted that the Secretary Environment was not a party in the writ petition. By an amendment, respondent no. 4-hotel was impleaded as a party to this contempt petition.

8. As noted above the retaining wall being maintained and not removed by the authorities is contended to be the breach of the orders passed by this Court.

9. The learned Counsel for the petitioner would submit that the non-removal of the existing retaining wall is an action amounting to contempt on the part of the officials-respondents being directly in breach of the directions as contained in paragraph 93(II)(f) of the orders passed by the Division Bench (supra). It is contended by the petitioner that once the NCSCM has categorised the retaining wall to be an offending structure, there was no question of the authority not taking any action to demolish the retaining wall. It is her contention that the direction is required to be considered as it stands and there is no scope for any other inference to be made, in regard to the said directions so as not to take any action or resort to further decision making on the issue of the retaining wall. The learned Counsel for the petitioner has contended that direction 93(II)(f) as made by the Division Bench while disposing of PIL Writ Petition No. 26/2017, cannot be read with or influenced by any other orders or observations/directions made by the Division Bench. It is for such reason the Court needs to initiate contempt action against the respondents for having intentionally

disobeyed the clear mandate of the directions of the Court as contained in paragraph 93(II)(f). It is her submission that in fact, the orders in question passed by this Court are further amplified when the Court observed in paragraph 93(II)(h) that, any violation of the said directions by the authorities was to be viewed seriously and will be treated as 'Contemnors' of the orders of this Court. The order being self operative, this is a clear case where this Court needs to take action against the respondents for having intentionally breached the directions of this Court in not removing the retaining wall.

10. As a notice before admission was issued, the respondents have appeared. Also reply affidavits on behalf of the respondents have been placed on record. The official respondents which include the Chief Secretary, State of Goa, Secretary of Environment, and Member Secretary of the Goa Coastal Zone Management Authority (GCZMA) in one voice have contended that there is not a remotest breach of the orders of this Court by any of these authorities. They say so on affidavit expressing their unconditional respect and regard to the orders of this Court. Similar is the stand of the hotel, which is raised on behalf of respondent no. 4 in the present Petition.

11. Mr. Lotlikar, learned Senior Counsel for the Chief Secretary, State of Goa as also, for the State would submit that the judgment dated 24 August 2018 was necessarily required to be read with judgment dated 29 June 2015 passed by the Division Bench in Writ Petition No. 333/1993. He has drawn our attention to the following paragraphs of the affidavit as filed by respondent no. 1- Chief Secretary to contend that the decision to retain the wall has been taken after hearing all the parties and after calling for expert opinion based on concrete technical materials, more particularly, considering the position of the river along the concerned lands of respondent no. 4 (the hotel). We need to note such contentions of the Chief Secretary in said paragraphs, which read thus:

> *10. I say that to prevent the erosion of the bank and siltation of river Mandovi along the land of the Respondent Hotel, for which purpose the State of Goa was enjoined to take necessary steps, the Authority decided that the retaining wall could be allowed to continue subject to certain conditions. I say that the GCZMA is an Authority constituted in terms of the powers conferred under the Environment (Protection) Act, 1996. The Authority is an expert body appointed to deal with issues relating to the Coastal Regulation Zone. I say that the Authority has various powers and has to deal with environmental issues relating to the Coastal Regulation Zone which may be referred to it by the Government. The Authority also has to identify coastal areas highly vulnerable to erosion or*

degradation and to take appropriate measures for such areas.

13. I say that the Authority thereafter again consulted the Water Resources Department and recorded the statement of the Chief Engineer of the Department. The WRD also gave a power point presentation to the Authority. I say that the Authority, after considering all the issues and the directions issued by this Hon'ble Court, passed the Order dated 16.3.2021. I say that since existence of the retaining wall is critical, even if the existing one is demolished, the new wall will have to be constructed at that very place to avoid erosion and siltation at the expense of the Government.

14. As regards the third issue about the access being blocked, a report was called for from the Water Resources Department, vide letter dated 06.02.2020 issued by the Authority. The WRD responded by a letter dated 12.02.2020 pointing out that an inspection was held and it was found that the access connected to the public road leading to the beach was clear of obstruction and was about 100 metres in length and 5 metres in width near the hotel. Photographs were also supplied which are a part of the letter, which is enclosed along with the affidavit dated 13.02.2020 filed by the Member Secretary.

16. I, however, submit that in the event this Hon'ble Court comes to the conclusion that the retaining wall is liable to be demolished, notwithstanding what has been stated hereinabove, I shall ensure that the same is carried out as per the directions of the Court.

12. Mr. Lotlikar has also drawn our attention to the petitioner's rejoinder affidavit to contend that the said affidavit, does not in the

remotest manner question the decision making process much less, to contend that such decision was in intentional disobedience of the Court's order dated 24 August 2018. Mr. Lotlikar has also drawn our attention to paragraphs 18 and 21 of the affidavit dated 13 February 2020 filed on behalf of Shri Johnson Fernandes, Member Secretary of GCZMA in regard to the issue of soil erosion as considered by the GCZMA, which is directly relevant to the conservation of the retaining wall. We need to note the said paragraphs, which read thus:

> *"18. I say that as regards the retaining wall, the same is linked with soil erosion and the decision has to be taken based on the Report of the Water Resources Department, which is the specialized agency dealing with matters relating to soil erosion. I say that this is all the more necessary in view of the fact that the State was directed to take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the land of the private respondent.*
>
> *21. As regards the anti erosion measures and the retaining wall, the WRD has submitted a letter pointing out that inspection was held on 11.02.2020 along with Scientist Shri V.B. Sharma of Central Water and Power Research Station, Khadakwasla, Pune, a premiere institute of Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation of the Government of India to examine the impact of demolition of the retaining wall and that Shri Sharma had submitted a preliminary report observing that the exiting wall is able to protect the river bank from the two forces exerted by high river*

currents and wave impact. It is further observed that the two forces may cause erosion in the vicinity of the hotel area if the wall is demolished. The letter has also stated that the report observed that the final findings on the effect of demolition can be provided after carrying out detailed studies based on field observation like local bathymetry in the river, sediment size of bed material, suspension sediments concentration, etc."

13. Our attention is also drawn to the additional affidavit filed by Shri Dasharath M. Redkar, Member Secretary of the GCZMA dated 17 March 2021, wherein the deponent has expressed the concern that if the retaining wall was to be removed it would cause irreparable damage to the shoreline resulting in eastward shifting of the river and causing damage to sea erosion. The relevant paragraphs of the said affidavit read thus:

6. I say that the GCZMA in the earlier affidavit had pointed out that it may not be possible to interfere with the retaining wall which exists on site until appropriate measures are explored and finalized to ensure compliance with the direction to prevent erosion more particularly because of the fact that the State was directed to take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the land of the private Respondent.

7. I say that after the preliminary report of WRD was received, the GCZMA decided to await the final report of CWPRS. I say that the final report was received along with the letter of the WRD dated 16.9.2020 and was placed before the GCZMA. I say that the Report - "Mathematical Model studies on Hydrodynamics and

sedimentation for demolition of Retaining Wall at Marriott Hotel, Goa" observes that the site in influenced by waves, tide and large river discharges and inter alia concludes that the shifting of left bank would increase the curvature of the river resulting in more erosion at the left bank and further observes that the demolition of the existing wall would result in shifting of channel towards left bank and would further worsen the situation of erosion as angle of oblique current would further increase and the wave forces would be borne by the bank alone. The respondent no.3 crave leave to refer and rely upon the said final report dated 16/09/2020.

8. I say that it in view of observation made in the final report was decided to hear the parties and then take a decision in the matter. I say that the GCZMA also consulted the Water Resources Department, which expressed concern over removal of the retaining wall and its impact on anti-erosion works.

9. I say that the GCZMA has observed that the removal of existing retaining wall may cause irreparable damage to the shoreline resulting in eastward shifting of the river and causing damage to sea-erosion prevention measures already taken earlier in the area. I say that in the interest of prevention of erosion of the shoreline and to protect the erosion prevention works put up by WRD, the GCZMA decided to leave the retaining wall in the present condition and maintain it properly. I say that the GCZMA has directed that the Hotel shall not put the area between the retaining wall and the imaginary line drawn parallel to the HTL of 1991 as per the NCSCM Report for any kind of commercial use.

Annexed hereto and marked ANNEXURE C is a copy of the minutes of the 249th meeting of GCZMA held on 18.02.2021.

10. I say that if the retaining wall which exists at site serves the purpose of protecting the shoreline and the properties in the area from soil erosion and the tidal effects, no purpose will be served by demolishing the same and to again construct another wall. On the contrary, it will serve the concern of this Hon'ble court in its judgment dated 29/06/2015, whereby it is directed that the Government should "take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of the respondent nos. 7 and 9". I say that such demolition may cause major damage to the area, which is not in public interest or for that matter the interest of any of the parties.

14. Mr. Lotlikar would thus submit that the retaining wall is in accordance with the decision taken by the GCZMA and would be required to be retained and the same is in complete compliance with the decision taken by this Court in Writ Petition No. 333/1993. It is his submission that the directions of the Division Bench in PIL Writ Petition No. 26/2017 in paragraph 93(II)(f) (supra) directed the NCSCM to make a report and thereafter, considering the observations in the report, a decision was required to be taken and which has rightly been taken by the GCZMA by its order dated 11 March 2021 after hearing the parties. It is his submission that the petitioner is deliberately reading the directions

of the Court as it suits the petitioner as if the NCSCM observations would override the binding orders of the Division Bench dated 29 June 2015 in Writ Petition No. 333/1993. It is his submission that this is not what has even been remotely held by the Division Bench in its subsequent order dated 24 August 2018 in PIL Writ Petition No. 26/2017 wherein in no manner such earlier directions were disturbed. It is his contention that in fact the orders of the Division Bench dated 24 August 2018 in PIL Writ Petition No. 26/2017 were assailed by the hotel before the Supreme Court in SLP (C) No. 33743/2018. The Supreme Court by an order dated 11 January 2019 while dismissing the Special Leave Petition observed that no interference with the order of this Court was required and the petitioner therein (respondent no. 4-hotel) was permitted to urge its defence and take all its points before the authority at the time of consideration of the matter. The said order reads thus:

> *"Heard learned counsel for the petitioner and perused the relevant material.*
>
> *We are not inclined to interfere with the order impugned in the special leave petition. The same is, accordingly, dismissed.*
>
> ***As the High Court has merely sought a report from the National Centre for Sustainable Coastal Management with regard to the High Tide Line, we do not see how the said direction of the High Court could have prejudiced***

the petitioner, inasmuch as it will always be open to the petitioner to urge its defence and take all points before the said authority at the time of consideration of the matter."

(emphasis added)

15. It is hence Mr. Lotlikar's submission that even the Supreme Court has observed that respondent no. 4-the hotel could urge its defence and take all points before the authority at the time of consideration of the matter. Thus, according to Mr. Lotlikar, on a cumulative reading of the two orders of the High Court and the order of the Supreme Court, there was no infirmity in the procedure adopted by respondent no. 1 in accepting the expert decision of the GCZMA not to demolish the retaining wall and thus, there is no disobedience whatsoever on the part of respondent no. 1 much less, any intentional disobedience as to the orders passed by this Court.

16. Mr. Lotlikar would next submit that the contention of the petitioner to press this contempt petition is in fact contrary to the orders of the Division Bench dated 29 June 2015 in Writ Petition No. 333/1993 and the orders of the Supreme Court dated 11 January 2019 (supra). It is his submission that no litigant is permitted to argue a case, which is in fact offending the directions

of the High Court and the Supreme Court in the said proceedings. In support of his contentions, Mr. Lotlikar has placed reliance on the decision of the Supreme Court in **Dr. U.N. Bora Vs. Assam Roller Flour Mills Association & Another**[1] and **Indian Airports Employees' Union Vs. Ranjan Chatterjee & Another**[2].

17. Mr. Rivankar, learned Senior Counsel for the GCZMA-respondent no. 3 at the outset has drawn the Court's attention to the orders passed by the Division Bench of this Court in Writ Petition No. 333/1993 (supra) and more particularly, to the direction no. (ii) namely, *the respondent no. 2 shall take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of the respondent nos. 7 and 9.* According to Mr. Rivankar, this direction is instantaneously relevant insofar as the petitioner's case of removing the retaining wall is concerned. Mr. Rivankar would submit that the second petition (PIL Writ Petition No. 26/2017) on which the order in question dated 24 August 2018 is passed, was clearly a continuation of the issues as raised in Writ Petition No. 333/1993 decided by the Division Bench by its judgment and order dated 29 June 2015, and relevant to respondent no. 4-hotel, who was a

1 (2022) 1 SCC 101

2 (1999) 2 SCC 537

party in both the proceedings. Thus, Mr. Rivankar would submit that the consequence of the directions of the Division Bench in Writ Petition No. 333/1993 dated 29 June 2015, not only was known to the petitioner, but also, clearly accepted by the petitioner. He submits that these orders were significantly relevant and were need to be subsisting when the Division Bench passed orders on PIL Writ Petition No. 26/2017. It is his submission that the Division Bench in its order dated 29 June 2015 in paragraph 37(ii) having categorically directed that the State of Goa (respondent no. 2 therein) shall take all measures to prevent the erosion of the bank and siltation of river Mandovi along the concerned land of respondent nos. 7 and 9, namely, the hotel. It was thus incumbent for all the authorities to comply with such directions by taking an appropriate decision in accordance with law. It is submitted that accordingly, the GCZMA heard the parties and after taking into consideration the expert material vide order dated 11 March 2021 has taken a decision considering the provisions of the Environment Protection Act and the Rules framed thereunder that the proceedings in respect of the retaining wall would stand discharged in terms of the decision taken in the 249th GCZMA meeting held on 18 February 2021. The relevant extracts of the order are required to be noted, which read thus:

"AND WHEREAS, in the meeting 249th GCZMA meeting held on 18/02/2021 it was decided as follows:

"In view of the direction passed by the Hon'ble High Court by Judgment dated 29/6/2015 in Paragraph 37 (ii) with respect to the measures to be taken to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of the Hotel, this Authority has sought for a Report from the WRD. The WRD has consulted an expert agency of the Union Ministry of Jalshakti, Government of India, namely Central Water and Power Research Station (CWPRS), Ministry of Jal Shakti, Government of India, Pune which possesses technical expertise in the field of coastal protection and specialises in conducting physical and mathematical model studies.

This Authority considered the Expert Report dated 10/09/2020 received from the Central Water and Power Research Station (CWPRS), Ministry of Jal Shakti, Government of India, Pune being 'Mathematical Model Studies on Hydrodynamics and Sedimentation for Demolition of Retaining Wall at Marriott Hotel, Goa submitted through the WRD. The report in conclusion states as follows:

- ***The high river discharges and wave and oblique flow towards left bank due to land outcrop at Reis Magos fort site (right bank side) play major important roles in erosion of bank in the vicinity of Marriott hotel.***
- ***Shifting of left bank would increase the curvature of river resulting in more erosion at the left bank.***
- ***The demolition of existing wall would result in shifting of channel towards left bank and this would further worsen the situation of erosion as angle of oblique current would further increase and the wave forces would be borne by bank alone.***

The Authority consulted the Water Resources Department to clarify on the issue of retaining wall as per the abovementioned report. The Chief Engineer, Water Resources Department expressed serious concern over impact of removal of retaining wall on anti-erosion works in the vicinity viz at Youth Hostel, Sports Complex etc and cautioned the Authority on shifting of the retaining wall.

The CRZ Regulations also provide for "prohibition of land reclamation, bunding, disturbing the natural course of sea water with similar obstructions except those required for control of coastal erosion" and....

Considering the spirit of the directions of Hon'ble Bombay High Court at Goa, CRZ Regulations, reports of the expert body and the facts on the ground, the Authority observes that the removal of existing retaining wall may cause irreparable damage to the shoreline resulting in eastward shifting of the river and causing damage to sea-erosion prevention measures taken by the Water Resources Department, Govt. of Goa in the vicinity viz at Youth hostel, Campal Stadium, Bhagwan Mahavir Garden etc as has been observed by looking at old collapsed retaining wall of 1978 built by the Water Resource Department in front of the existing retaining wall under question. Therefore, in the interest of prevention of erosion of the shoreline and to protect the erosion prevention works put up by the Water Resources Department, Govt of Goa in the immediate vicinity of the structures, the Authority decides that the retaining wall should be left in the present condition and should be properly maintained.

The Authority directs that the Hotel shall not put the area between the retaining wall and the imaginary line drawn parallel to the HTL of 1991 as per the NCSCM

Report for any kind of commercial use. As a measure to clearly delineate this area, the Hotel shall erect bio-fencing at the imaginary line under the supervision of experts of the GCZMA.

The matter stands disposed."

Now therefore, the GCZMA in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 (Central Act 29 of 1986) read with sub-rule (3) (a) of Rule 4 of the Environment (Protection) Rules 1986, and read with power vested with the GCZMA vide Order S.O. 3975 (E) dated 31/10/2019 issued by the Ministry of Environment & Forests, Government of India, hereby discharges proceedings in respect of retaining wall in property Hotel Goa Marriott Resort c/o V.M Salgaocar Corporation Pvt. Ltd, Salgaocar Centre, E 4, Murgaon Estate, Off Airport Road, Chicalim, Goa in terms of decision taken 249th GCZMA meeting held on 18/02/2021.

a) Further, Hotel Goa Marriott Resort c/o V.M. Salgaocar Corporation Pvt. Ltd, Salgaocar Centre, E 4, Murgaon Estate, Off Airport Road, Chicalim, Goa shall not put the area between the retaining wall and the imaginary line drawn parallel to the HTL of 1991 as per the NCSCM Report for any kind of commercial use.

b) As a measure to clearly delineate this area, the Hotel shall erect bio-fencing at the imaginary line under the supervision of experts of the GCZMA in terms of decision taken 249th GCZMA meeting held on 18/02/2021.

The proceedings are disposed off accordingly.

(emphasis added)

18. Mr. Rivankar submits that such decision taken by the GCZMA is fully in consonance with the directions of the Division Bench in its order dated 29 June 2015 passed in Writ Petition No. 333/1993 as noted by us here-before. Mr. Rivankar would also submit that in no manner the said directions referred in PIL Writ Petition No. 26/2017 were upset by the Supreme Court. It is his contention that in the clear facts of the case, both the orders were required to be read in conjunction and it cannot be the position that the authority would act in the manner complying with the order dated 24 August 2018 passed in PIL Writ Petition No. 26/2017 and at the same time, violate the directions as to the measures to prevent erosion of the bank and siltation of river Mandovi along the concerned land of respondent no. 4 being the prior directions issued in Writ Petition No. 333/1993. Accordingly, his contention is that the contempt petition on the face of it, is misconceived and untenable and in fact, it is an abuse of the process of the Court. He would submit that the contempt petition would thus deserve to be dismissed.

19. Mr. Sardessai, learned Senior Counsel for respondent no. 4 in supporting the contentions as urged on behalf of Mr. Lotlikar and Mr. Rivankar would submit that the contentions of the

petitioner of any contempt being committed by the respondents are not well founded. Mr. Sardessai would submit that the GCZMA after following proper procedure has taken a lawful decision dated 11 March 2021 and decided not to disturb the retaining wall and more particularly, which is in compliance of the directions of the Division Bench in Writ Petition No. 333/1993, when the Court had expressed a concern in regard to the measures to be taken by the State Government to protect the erosion of the bank and siltation of river Mandovi along the lands of the hotel. It is contended that such decision of the GCZMA is a reasoned decision which has taken into consideration every possible aspect including the environmental concern, as also the expert report in that regard, to come to a conclusion that there is no violation of the CRZ notification of 1991 so that the retaining wall needs to be disturbed. His contention is that the CRZ notification dated 19 February 1991 in paragraph 2(viii) clearly protects bunding for control of coastal erosion as also referred by the GCZMA, hence, to have a retaining wall is not a prohibited activity as contained in paragraph 2 of such notification. It would be relevant to note paragraph 2(viii) of the 1991 CRZ notification, which reads thus:

> 2. *Prohibited Activities:*
>
> *The following activities are declared as prohibited within the Coastal Regulation Zone, namely:*

...

(viii) land reclamation, bunding or disturbing the natural course of sea water with similar obstructions, except those required for control of coastal erosion and maintenance or clearing of waterway, channels and ports and for prevention of sandbars and also except for tidal regulators, storm water drains and structures for prevention of salinity ingress and for sweet water recharge."

(emphasis added)

It is thus Mr. Sardessai's submission that it is not well founded for the petitioner to allege any intentional breach of the orders passed by this Court. It is hence submitted that the Petition be dismissed.

20. On the above conspectus, we have heard the learned Counsel for the parties and with their assistance we have perused the record.

21. We may at the outset observe that there is no manner of doubt that the petitioner's two proceedings, namely, Writ Petition No. 333/1993 decided by the Division Bench by its judgment and order dated 29 June 2015 and the second PIL Writ Petition No. 26/2017 decided by the Division Bench by its judgment and order dated 24 August 2018, were intricately connected. Both these

proceedings concerned the grievances of the petitioner qua the structures of respondent no. 4 (the hotel) whether were offending the CRZ Regulations. Thus, both the said judgments are required to be read in conjunction. In fact what we observe is that the directions in the first order dated 29 June 2015 have a direct bearing on the subsequent order dated 24 August 2018 on the second petition. It clearly appears that the petitioner was also not oblivious to this position. In fact, this is a categorical stand on behalf of the respondents and more particularly, in paragraph 7 of the affidavit filed by the Chief Secretary, which is not denied by the petitioner in the rejoinder affidavit much less, any specific denial. If this be so, there is a legal consequence which occurs by virtue of the directions as contained in the first order dated 29 June 2015 as noted above in regard to the erosion of the bank and siltation of the river Mandovi along the lands of respondent no. 4 becoming enforceable. These directions of the Court being binding on the respondents, the petitioner cannot assert to the contrary and contend that such directions in the said order have become redundant. In any event, as noted above the said directions in no manner whatsoever, even remotely were disturbed by the order dated 24 August 2018 as passed by the Division Bench in the PIL in question (i.e. PIL Writ Petition No. 26/2017). The petitioner also

does not argue so. On a query on this position, we have been informed by the learned Counsel for the petitioner that only the orders dated 24 August 2018 are to be seen, as there is an intentional breach of the directions contained in paragraph 93(II)(f) by non-removal of the retaining wall amounting to contempt of Court.

22. We are afraid to accept such contention for more than one reason. As noted by us above, and which is clearly to the knowledge of the petitioner that after the report of the NCSCM, the GCZMA had issued a show cause notice to respondent no. 4, on which all the parties including the petitioner were heard, and the observation of the NCSCM qua the hut and the part of the swimming pool was implemented as these structures were removed. Thus, a compliance of the direction of this Court qua these structures was attained.

23. However, insofar as the retaining wall is concerned, there is in fact, no quarrel, although, sought to be unwarrantedly created by the petitioner. The retaining wall was a matter of concern in the light of the specific directions of the Division Bench in the first order dated 29 June 2015 when it directed the State of Goa, on protection of the land along the concerned land of respondent no.

4 (the hotel) so as to prevent erosion and siltation. The petitioner was not only well aware but conscious that this obligation is required to be complied by the State of Goa being a specific direction of the Division Bench in its order dated 29 June 2015. This apart, the GCZMA invited the parties for a hearing on this issue. The petitioner was also called upon to participate, however, the petitioner appears to have only and only asserted non compliance of the observations of the NCSCM by the State of Goa and the GCZMA wanted to consider the ill effects of removal of the wall considering the peculiar position of the Mandovi river and the concern caused due to the river currents causing erosion and siltation, which was imminently to be avoided. In fact, it would bring about a damage if such erosion was not to be avoided.

24. As noted above, the GCZMA called for an opinion of the WRD (Water Resources Department), which was deliberated upon in several meetings held between the parties. A technical report of the Central Water and Power Research Station (CWPRS) was invited. Such scientific report observed thus:

> *"The scientific report has recorded that "the site is influenced by waves, tide and large river discharges and eaves play an important role in erosion of bank in the vicinity of Marriott hotel. This stretch is prone to erosion. Other major cause of erosion at the left bank is bending of river which is result of a large land outcrop*

towards Reis Magos Fort site (right bank site) and flow gets deviated towards the left bank, which can also be correlated with the number of protective/anti-erosion works implemented by the state since 1978 all along the left bank. The river has the tendency to move towards left bank due to sharp bend in the upstream. This oblique flow along with high river discharge combined with severe wave condition is the worst scenario for the bank near Marriot hotel. The demolition of wall would result in shifting of channel towards left bank and this would further worsen the situation as angle of oblique current would further increase. The peak currents near the Marriott hotel wall are of the order of 0.9 m/s. In addition to this, breaking and non-breaking waves exert huge thrust on the wall. After shifting the wall, the whole force would be borne by the bank resulting into further erosion. The distance of pillar of Marriott hall hardly remains at about 5m. The distance between imaginary line and wall footing would further be less. Shifting of left bank would not help in improving the hydraulic conditions in the river instead it may further worsen the situation as it will increase the curvature of bend in this region."

25. The said report of CWPRS concludes as under:

- *The high river discharges and wave and oblique flow towards left bank due to land outcrop at Reis Magos fort site (right bank side) play major important roles in erosion of bank in the vicinity of Marriott hotel.*

- *Shifting of left bank would increase the curvature of river resulting in more erosion at the left bank.*

- *The demolition of existing wall would result in shifting of channel towards left bank and this would further worsen the situation of erosion as angle of oblique current would further increase and the wave forces would be borne by bank alone.*

26. The GCZMA after hearing the parties including the petitioner passed an order dated 11 March 2021, as noted above deciding to retain the wall. It is however pertinent to note as to what was the stand of the petitioner before the GCZMA in the light of so much of technical and expert material was before the GCZMA on the need to have a retaining bund/wall along concerned land of respondent no. 4 (the hotel). The petitioner's stand as recorded in the GCZMA's order dated 11 March 2021 reads thus:

> *"15. Goa Foundation, the Complainant, argued earlier at length on the matter and in the written submission stated that that there are two directions to be complied by this Authority in compliance to the judgment passed by the Hon'ble High Court of Bombay at Goa vide order dated 29/06/2015 in WP No.333/1993 contained in paragraph 37 direction No.2 and 3 which pertains to prevention erosion of bank and siltation of river Mandovi and to take measures to provide access to the beach. Complainant further argument is that the direction No.2 & 3 of the Hon'ble High Court in the judgment dated 29/06/2015 pertains to State of Goa and not to the GCZMA and GCZMA cannot decide upon the same. The Directions issued in order dated 24/08/2018 passed in PIL WP 26/0217 by the Hon'ble*

High Court are to be complied by the GCZMA. The report called by the GCZMA from WRD with regards to retaining wall through outsource from CWPRS, Pune is entirely unwarranted. The retaining wall has been identified as violation of CRZ notification and had to be removed. The Hon'ble High Court had directed the Authority to demolish all the offending structures.

27. Further, most importantly, the decision of the GCZMA dated 11 March 2021 has not been assailed by the petitioner in any proceedings.

28. It is thus clear that the petitioner had no other stand except to confine its submission on the said order dated 24 August 2018 passed by this Court being binding on the State of Goa and not the GCZMA. According to the petitioner, hence, the GCZMA undertaking the exercise to find out whether the wall should be removed was unwarranted. This is also the contention in the present petition. Such contention of the petitioner to say the least is thoroughly misconceived as it overlooks that after the report of the NCSCM was received, the State of Goa had certainly raised a concern before the GCZMA in regard to the retaining wall, considering the directions of the Division Bench dated 29 June 2015 in Writ Petition No. 333/1993; and rightly so, as the retaining wall fell within the CRZ regulations on which only the GCZMA had an authority to consider any such issue and not the

State Government. A fair procedure was followed by the GCZMA to determine such issue which is clear from the detailed order dated 11 March 2021, by which the GCZMA has come to the conclusion that it is necessary to retain the wall to prevent soil erosion and siltation. Thus, such a decision to prevent damage to the environment as taken by the GCZMA cannot be a matter of any agitation by the petitioner who is stated to be canvassing an interest to protect the environment.

29. On the above backdrop, we may candidly observe that, we are somehow, aghast to note the grounds as set out in the Petition in alleging an action to be taken against the respondents, as serious as contempt of Court, not only against high ranking officials of the State Government but also private respondents. It would not require any authority to observe that the contempt jurisdiction of the Court is a serious jurisdiction and if it is to be invoked it has to be invoked in a responsible manner, more particularly when the respondents as arrayed to the present contempt petition are such high ranking officials discharging their public duties. A responsible litigant who invokes such jurisdiction, it is his/her first and foremost obligation to see that the Government machinery, as well as the Government officials, are not dragged into unwarranted proceedings, much less in contempt

proceedings. It cannot be that the high ranking Government officials are threatened by the sword of contempt proceedings, by any litigant, and without examining the core issue as to whether there is any intentional disobedience of the Court's orders.

30. We see that in the present proceedings the petitioner has invoked the contempt jurisdiction of this Court in an extremely casual nay reckless manner. We may observe that at the midst of the proceedings, we pointed out, such aspect of the matter to the learned Counsel for the petitioner. However, the learned Counsel for the petitioner submitted that there is sufficient case made out by the petitioner in pressing for adjudication of these proceedings and initiate contempt action against the respondents. We thus need to note the grounds as set out in the Petition alleging contempt, which to our surprise, do not unfold any case of an intentional disobedience of our orders. The said grounds read thus:

"GROUNDS

32. The petitioner is therefore approaching this Hon'ble Court under its contempt jurisdiction on the following grounds among others:

A. The original directions given in the original judgment dated 29.6.2015 required action to be taken within a period of six months. This is after 22 years of the petition being filed and being heard by this Hon'ble High Court.

After 6 months there was still no compliance with the directions of this Hon'ble Court by any of the authorities. The petitioner therefore filed an application to draw the attention of this Hon'ble Court to the matter, and even filed an earlier contempt petition.

B. The authorities ganged up together to frustrate the carrying out of this High Court's order and manipulated and submitted a compliance report (the first report) which showed/located the HTL in the river (and not on land, as required by the CRZ notification). This was challenged by the petitioner and the court, indicating its displeasure, set aside the report and directed a fresh report to be done.

C. A second time, the same cabal of officers brazenly plotted to ensure that the interest of the hotel would continue to be protected and succeeded in manufacturing another report (the second report) which again cast the HTL in the river. Naturally, the second report also came to the conclusion that no demolition was required.

D. The Court set aside the second report and directed the NCSCM to demarcate the HTL in terms of the original order of this High Court in W.P. No. 333/1993, but not before another year had passed.

E. No action was taken pursuant to NCSCM report. Instead the GCZMA now issued a show cause notice to the respondents inviting them to object. The opportunity was quickly seized and the hotel owners filed two detailed representations and were preparing for more.

F. The pattern of obstruction is clearly established in the conduct of the GCZMA in filing the first report and then filing the second report and then obstructing the

implementation of the third report by ensuring further delays in implementation of this Court's directions.

G. The Resp. Nos. 1 & 2 were directed and duty bound to implement the directions of this Hon'ble Court as head of the administration and the environment department respectively. The office of the Resp. No. 1was a respondent in the first writ petition and the subsequent writ petition. For reasons best known to him, the present incumbent has decided that he and his administration will not comply with the orders of this Hon'ble Court. Petitioner has therefore no other option but to move this contempt petition since contempt has occurred in more than abundant fashion as shown in the facts related in the petition.

31. A bare perusal of the grounds itself ex facie indicates that there is no contempt in the remotest manner, as argued at the Bar. In fact, a vague plea of a contempt would amount to an abuse of the process of law. It cannot be so casual.

32. Be that as it may, at the cost of precious judicial time, we have examined in depth as to whether there is any contempt/any intentional disobedience of the order dated 24 August 2018 passed by this Court. As we have observed in detail in the foregoing paragraphs, it is quite clear that the directions of the Division Bench of this Court in Writ Petition No. 333/1993 dated 29 June 2015 clearly imposed obligation on the State of Goa to take all measures to protect the bank and siltation of river

Mandovi along the concerned land of respondent no. 4 i.e. the hotel. There is no quarrel that the part of the swimming pool has been removed to confine the same to the requirements of the location as also, the hut has been removed. However, as far as the retaining wall is concerned, we find that a decision in that regard was certainly required to be taken considering the observations of NCSCM, and in view of the clear directions of the Division Bench in Writ Petition No. 333/1993 in its order dated dated 29 June 2015. Accordingly, the GCZMA had undertaken such an exercise wherein the report of the NCSCM was considered. As observed, the State of Goa is not the authority to take a decision in regard to the said directions of this Court. Parties were heard including the petitioner and a decision dated 11 March 2021 was taken, which in our opinion, is completely in consonance with the directions of the Division Bench in Writ Petition No. 333/1993.

33. Ms. Alvares, learned Counsel for the petitioner relied on the decision of the Supreme Court in **T.N. Godavarman Thirumulpad Vs. Ashok Khot & Another**[3]. There can be no quarrel on the observations of the Court in the celebrated decision. However, we are unable to appreciate as to how this decision would be applicable, in the facts and circumstances of the present case,

3 Contempt Petition (C) No. 83/2005

wherein the Court has emphasized the need to protect the environment by virtue of the directions as made by the Court in the first petition. Certainly in the present facts, erosion of the soil and siltation are environmental aspects, which were required to be safeguarded as observed by the GCZMA.

34. In the context of the Court's contempt jurisdiction, Mr. Lotlikar's reliance on the decision in **Dr. U.N. Bora's** case (supra) is well founded as the Supreme Court has clearly observed that the contempt jurisdiction is a powerful weapon in the hands of the Courts of law, but that by itself operates as a string of caution and unless, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law Courts to exercise jurisdiction under the Act. It was observed that the contempt proceedings are quasi criminal in nature, and therefore, standard of proof required in these proceedings is beyond reasonable doubt. It was observed that it would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. These observations were made referring to the earlier decision in **Hukum Chand Deswal Vs. Satish Raj Deswal**[4] and **Ram Kishan Vs. Tarun Bajaj**[5]. It

4 (2021) 13 SCC 166

5 (2014) 16 SCC 204

was also next observed that in order to punish a contemnor, it has to be established that disobedience of the order is "wilful". The word "wilful" introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. It was observed that "wilful" means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom and it excludes casual, accidental, *bona fide* or unintentional acts or genuine inability. It was thus observed that wilful acts do not encompass involuntarily or negligent actions and the act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". The Court observed that wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently and it does not include any act done negligently or involuntarily. Thus, necessarily there being a requirement of action with evil motive on the part of the contemnor, even if there is a disobedience of an order, such disobedience if is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. These principles were certainly required to be borne in mind by

the petitioner in invoking the contempt jurisdiction of this Court in the present proceedings and vociferously pressing the petition.

35. The learned Counsel for the respondents are correct in contending that the directions of this Court in PIL Writ Petition No. 26/2017 dated 24 August 2018 in the facts of the case could not be read *dehors* the prior directions vide order dated 29 June 2015 in Writ Petition No. 333/1993 and in fact, the GCZMA has observed that the demolition of the wall would worsen the situation and hence for this purpose, it was found appropriate not to demolish the retaining wall as it would cause serious erosion as observed in the said order of the GCZMA and as rightly pointed out by the respondents. The remedy of the petitioner was to assail the decision of the GCZMA dated 11 March 2021 and certainly not to prosecute the present contempt petition.

36. Thus, we find no case whatsoever has been made out for proceeding against the respondents to entertain the contempt petition, accordingly, we dismiss this contempt petition. However, as we find ourselves persuaded to hold that this contempt petition is an abuse of the process of law, we cannot dismiss the contempt petition simpliciter, but it has to be dismissed with costs.

Accordingly, the contempt petition is dismissed with costs of Rs.50,000/-.

37. The petitioner shall deposit the costs of Rs.50,000/- with the Goa State Legal Services Authority within two weeks from the date on which copy of this order is made available. Ordered accordingly.

38. In view of the dismissal of the Contempt Petition, Miscellaneous Civil Application Nos. 150/2022, 64/2020, 198/2022 and 2119/2022 (F), do not survive and as such, stand disposed of.

BHARAT P. DESHPANDE, J. G.S. KULKARNI, J.

VAIGANKAR ESHA SAINATH Digitally signed by VAIGANKAR ESHA SAINATH Date: 2022.10.04 19:55:23 +05'30'

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Section Officer
High Court of Bombay at Goa
Porvorim - Goa

1686
12/10/2022

IN THE SUPREME COURT OF INDIA

Order XXI Rule 3(1)(a)

(CIVIL APPELLATE JURISDICTION)

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CIVIL) NO. _____OF 2023

(Arising out of the Impugned Judgment and final order dated 30.09.2022 passed by the Hon'ble High Court of Bombay at Goa, in Contempt Petition No 2 of 2020)

WITH PRAYER FOR INTERIM RELIEF

BETWEEN

POSITION OF PARTIES

	Before the Hon'ble High Court	Before this Hon'ble Court
The Goa Foundation, through its Secretary, Dr. Claude Alvares, age 74 years, having Regd. Office at Room No 7, Above Mapusa Clinic, Mapusa, Goa - 403507. Email id: goafoundation@gmail.com	Petitioner	Petitioner
VERSUS		
Shri Parimal Rai, Office of the Chief Secretary, Secretariat, Porvorim, Goa – 403521.	Respondent No. 1	Respondent No. 1
Shri Puneet Kumar Goel, Secretary [Environment], Secretariat, Porvorim, Goa – 403521.	Respondent No. 2	Respondent No. 2

Shri Johnson Bedy Fernandes, Member Secretary**,** The Goa Coastal Zone Management Authority, 1st Floor, B-Wing,Pandit Deendayal Upadhyay Bhavan,Pundalik Nagar, Alto - Porvorim, Bardez, Goa – 403521.	Respondent No. 3	Respondent No. 3
V.M. Salgaocar Corporation Private Limited, having its registered office at Salgaocar Centre, E4, Murgaon Estate, Off Airport Road, Chicalim, Goa – 403711.	Respondent No. 4	Respondent No. 4

All parties are contesting

To

THE HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF
SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The Present Special Leave Petition is being filed under Article 136 of the Constitution of India against the Impugned Judgment and final Order dated 30.9.2022 passed by the Bombay High Court at Goa in Contempt Petition No.2/2020, whereby the Hon’ble Court dismissed the Contempt Petition with a direction that Rs. 50,000 costs to be paid by the Petitioner. The Petitioner paid the costs without prejudice to file the present SLP.

2. **QUESTIONS OF LAW:**

The following questions of law of public importance arise for consideration by this Hon'ble Court in the present petition:

I. Whether the Hon'ble High Court was right in dismissing the Contempt Petition, when the direction issued by the Hon'ble High Court was yet to be fully executed by the Respondents, the result which, two considered orders of a constitutional court in two judgments and orders have been disrespected and kept permanently in abeyance, if not cancelled, depriving the public of access to all areas of a public beach, which is an unprecedented situation.

II. Whether the Hon'ble High Court was right in imposing costs of Rs.50,000 on the Petitioner, when it was clear from the record that the Petitioner was merely bringing to the notice of the High Court that its second judgment and order seeking to implement the directions passed in the first judgment and order was not complied with, and as subsequent events showed the Respondents had unilaterally taken a decision not to carry out the direction of the Hon'ble Court by procuring a fresh report which according would be treated as contempt?

III. Whether the High Court ought to have castigated the Petitioner for joining "high functionaries" like the Chief Secretary as respondents, when in fact these officers were Respondents in the original petition in which orders were passed and they disobeyed, and it is those acts of omission and commission of these Respondents that frustrated the implementation of the High Court's directions and consequently they were necessary parties and it was the duty

of Petitioner to inform the Court when its directions are not complied with, leaving it to the discretion of the High Court to grant the Respondents time to remove the alleged contempt or to issue notice of contempt.

IV. Whether the Petitioner could be visited with costs despite the fact that the High Court itself, already dismayed over non-implementation of its earlier orders in the matter, had issued a direction that any further inaction in violation of its orders would be treated as contempt of court.

V. Whether the High Court ought to have imposed costs on the Petitioner when it was clear from the record that the High Court had itself granted time repeatedly to the Respondents to carry out the Court's directions, and furthermore, it was obvious that only because the contempt was filed that two of the three structures were demolished.

VI. Whether approaching a High Court with a contempt Petition can be visited with costs when there is no other recourse available to seek implementation of the Court's directions and Petitioner had not only a right but a duty to file a contempt petition in such circumstances, especially as the matter concerns an issue of public interest, viz., recovery of a beach for the public's use and enjoyment.

VII. Whether the High Court, even if it had good reason, could not have dismissed the CP without imposing costs?

VIII. Whether the High Court was right in permitting the Goa Coastal Zone Management Authority to subvert and bypass its direction with a subsequent report when the High Court had already divested the GCZMA from any further involvement in the proceedings due to its sorry collusive

conduct with the respondent hotel in the same matter in the past?

IX. Whether in contempt jurisdiction, the High Court could cancel a direction given by two considered judgments of the same High Court and directions issued after detailed final hearings of both petitions on merits?

X. Whether the GCZMA ought not to have sought the leave of the High Court to delay the execution of its directions as it intended to carry out a study about the possible consequences of demolishing the compound wall inorder to determine whether the Court's direction was sound / correct?

XI. Whether the State Govt through the Chief Secretary could have accepted the decision of the GCZMA not to demolish the compound wall of the hotel, without first applying to the High Court to seek modification of its direction to eliminate all structures constructed in violation of the CRZ Notification and restore the area to its original status?

XII. Whether the High Court in its impugned order could accept the argument of erosion of the beach when this specific argument had already been rejected by its judgment dated 24.08.2018 and by the NCSCM as well, after receipt of representation from the respondent hotel pursuant to order of this Hon'ble Court dismissing the respondent Hotel's SLP?

3. **DECLARATION IN TERMS OF RULE 3(2):**

The Petitioner states that no other Petition seeking leave to appeal has been filed by it against the impugned Judgement

and Order dated 30.9.2022 of the Bombay High Court Bench at Goa in Contempt Petition No.2/2020.

4. **DECLARATION IN TERMS OF RULE 5:**

The annexures P-1 to P-13 produced along with the Special Leave Petition are true copies of the Pleading/ documents which form part of the records of the case in the High Court against whose order the leave to appeal is sought for in this petition.

5. **GROUNDS**

The Petitioner is filing the present SLP under Article 136 of the Constitution against the impugned judgment on the following, amongst other grounds, which are without prejudice to each other: -

Petitioner had no choice but the duty to file the Contempt Petition

I. BECAUSE the High Court ought to have appreciated that the Petitioner had filed two writ petitions before filing the Contempt Petition, wherein the first judgment and order found that there were three constructions, including a wall, on the public Gaspar Dias beach in Panaji city, erected in violation of the Coastal Regulation Zone (CRZ) Notification, and in the second judgment there was an order directing the removal of offending constructions identified by the National Centre for Sustainable Coastal Management (NCSCM), failing which, it would be treated as contempt.

II. BECAUSE the Contempt Petition specifically drew the attention of the High Court to the aforesaid specific

direction issued by the High Court itself and the fact that the two judgments and orders had not been complied with by the stipulated date by the authorities named in the judgment and order.

III. BECAUSE the Petitioners had no alternative but to approach the High Court as there was glaring evidence in the case that the contempt should not continue to frustrate the directions issued by the High Court in public interest.

IV. BECAUSE ordinarily the Petitioner cannot prove contempt in the manner laid down in para 34 of the impugned judgment as contempt is an issue for the Court to decide. The contempt Petitioner can only bring facts relating to the non-compliance of an order to the notice of the Court trying contempt. In the present instance, there was a specific direction of the High Court direction that, given the past conduct of the authorities, inaction on the part of the Respondents would be treated as contempt. Thus, the Petitioner was acting pursuant to a specific direction of the High Court in filing the contempt petition.

V. BECAUSE a diligent Petitioner is duty bound to initiate contempt proceedings when orders of the court are not carried out as directed, more so in cases of public interest matters, where invariably, as a matter of practice, the Court first gives opportunity to the alleged contemnor to comply and thereby purge the contempt, which opportunity was granted by the Court in these proceedings and in the interim, two out of three constructions identified by the NCSCM were removed, several months after the contempt petition

was filed which was admitted by the High Court itself, thereby resulting in the partial success of the Contempt Petition.

Disparaging remarks against the Petitioner dismissing the Petition and imposing costs were unwarranted

VI. BECAUSE in view of the fact that the Petitioner was acting on the direction of the High Court in the second judgment and taking care not to file Writ Petition after the first judgment and filing it only after the direction of the High Court to treat non-compliance as contempt, there cannot be a finding of "*abuse of the process of law*" on the part of the Petitioner and it certainly cannot be penalized with costs in such circumstances.

VII. BECAUSE in view of the aforesaid there was no warrant for dismissal of the Contempt Petition.

VIII. BECAUSE in any event the Court could have dismissed the contempt petition without awarding costs or charging the petitioner with abuse of process of law.

IX. BECAUSE in the circumstances the finding in the impugned judgment that the Petitioner was "*guilty of abuse of process of law*" and imposition of costs imposed on the petitioner need to be set aside.

Challenge to the GCZMA Report not necessary

X. BECAUSE the High Court erred in holding that the Petitioner ought to have challenged the GCZMA decision which sought to allow the third CRZ violation and not

continued to prosecute the Contempt Petition. The High Court ignored the fact that the Contempt Petition was filed soon after the period provided in the order for compliance had ended (4 weeks). In other words, contempt had already committed the moment the period of 4 weeks ended and was continuing and therefore the Contempt Petition could not have been dismissed on this ground alone. Time had been granted by the Court only to carry out the directions of NCSCM. They were not carried out. Therefore the Petitioner had no choice but a duty to file the Contempt Petition.

XI. Instead of complying with the order of the High Court to remove the offending constructions, a decision was taken by the GCZMA on 11 March 2021 (more than a year after the Contempt Petition had been filed) not to execute the direction. There was no subsequent order of the High Court modifying the directions in its judgment. Thus, the decision of the GCZMA was, *ex facie*, in contempt of the order of the High Court.

XII. BECAUSE in fact, the entire exercise conducted by the GCZMA was a repeat of its two earlier attempts to protect the Respondent hotel's interest, both of which had been set aside by the High Court.

XIII. BECAUASE the Petitioner was not required to challenge an report produced by the GCZMA, as there was no leave from the High Court. The Petitioner had succeeded in two writ petitions on all counts, each case resulting in detailed judgments, elaborately setting out the reasons why the illegally constructed structures needed to be demolishedas a

result of which the GCZMA's intent to frustrate the Court's directions.

XIV. BECAUSE the Petitioner was only required to show that a decision had been deliberately and wilfully taken contrary to the direction issued by the High Court which action constituted contempt, but not an action to set aside by Petitioner to set aside the order of the GCZMA by moving a fresh writ petition.

Erosion of beach already decided

XV. BECAUSE the High Court could not have relied upon the argument based on erosion of the beach when the said issue had already been considered and rejected by the High Court in its judgment dated 24.08.2018 and by the NCSCM pursuant to dismissal of the SLP filed by the Respondent hotel. If the State of Goa was keen about erosion of the beach, it has no explanation as to why it did nothing on this issue from 2015 till the year 2021 that too, only after it became clear that demolition of the wall was inevitable.

The GCZMA had no role to play except implement the orders of the High Court

XVI. BECAUSE it had been noted by the High Court in both judgements for which reason the High Court, in scathing remarks, had ousted GCZMA from any further role in the implementation of the Court's directions. Thus the matter had already been concluded with a second judgment, appeal against which was also rejected by this Hon'ble Court. Only the execution of the order remained. Hence the Petitioner was right in not further contesting any new and illegitimate

report produced by the GCZMA, that too after receipt of the NCSCM report.

XVII. BECAUSE the High Court ought to have appreciated that it was due to display of rank collusion between the GCZMA and the Respondent Hotel that the High Court had divested the GCZMA from any further involvement in the matter of the CRZ violations of the hotel. If at all there was a role to play by the GCZMA, it was solely to implement the NCSCM's directions which the GCZMA refused to do. Instead the GCZMA again got involved in the matter ostensibly on the basis of the erosion of the beach to ultimately defeat orders and directions of the High Court which itself constituted contempt of the orders of the High Court.

XVIII. BECAUSE the High Court in the impugned judgment erred in:-

i) Not questioning the conduct of the Respondents which from 2015 itself showed intentional delays and attempts to obstruct and subvert.

ii) Not heeding the directions of the second judgment divesting GCZMA of any further active involvement in the matter.

iii) Not appreciating the reason why the matter had been taken over and handed over to the NCSCM.

The High Court's directions could not be undone by an Executive authority

XIX. BECAUSE the High Court ought to have appreciated that a direction issued by a Constitutional court cannot be undone by a statutory authority on an entirely new ground without seeking the leave of the High Court.

XX. BECAUSE the NCSCM identified and marked on a map the degree and extent of CRZ violations. Two of the three structures identified by NCSCM were in fact removed, albeit several months after the period given in the order had already been well exceeded.

XXI. BECAUSE the GCZMA could not have unilaterally taken a decision to violate explicit and time bound decisions and directions of a constitutional court, which had become final and against which SLP filed had been dismissed.

XXII. BECAUSE the High Court appeared not to notice that the second judgment of the High Court was not varied by the Supreme Court in appeal, but instead the Court permitted the Respondent hotel to make representations before the NCSCM, which was the final authority to decide on the structures required to be demolished whereupon the Respondent Hotel did present its argument of erosion of the beach before the NCSCM, which was rejected.

XXIII. BECAUSE the Court needed to appreciate that the second judgment was passed because the direction given in the first judgment remained unimplemented.

XXIV. BECAUSE two different benches of the High Court were thus of the view that the structures which impeded access of the public to the beach needed to be removed so that the law to protect the environment and the Public Trust Doctrine is strictly enforced. Dismissal of the contempt petition without execution of the directions in the judgment amounts to the earlier judgments being modified by the Court exercising contempt jurisdiction, which has no jurisdiction to so do.

XXV. BECAUSE once the directions of the High Court, upheld by the Supreme Court had the attained finality, they could no longer have been varied by any executive or statutory authority.

XXVI. BECAUSE the Respondent Hotel had also filed an SLP against the second judgment which was rejected by this Hon'ble Court, on the ground that the party was free to approach the NCSCM with its submissions (which it did).

XXVII. BECAUSE the GCZMA was duty bound to seek modification of the Court's directions to pursue its course of action, if it indeed could, since the matter had become final after the Respondent hotel's SLP was rejected by the Supreme Court. It could never have avoided implementation of the High Court's order unless it had obtained an order from this Hon'ble Court.

The NCSCM had found 3 offending constructions in the CRZ.

XXVIII. BECAUSE the NCSCM had found 3 offending constructions in the CRZ. The High Court's order of 2018

required the removal of all 3. It was because of the Contempt Petition that two offending structures were removed. Till the third structure (compound wall on the public beach) was removed, the contempt petition was maintainable and needed to be prosecuted.

XXIX. BECAUSE the High Court had to decide whether the decision of the GCZMA dated 11.3.2021 allowing the construction despite the finding of NCSCM and its own directions was acceptable conduct and not amount in contempt of the High Court's directions.

Principles of natural justice violated

XXX. BECAUSE the High Court was duty bound to inform the Petitioner of its intention of the finding that it arrived at against the Petitioner and to hear the Petitioner separately on the issue before passing its order. In the circumstances, the findings made against the Petitioner and the penalty imposed by way of costs are in violation of the principles of natural justice.

XXXI. The adverse findings against the Petitioner and penalty levied in terms of costs are not only painful for an organization like the Petitioner, with a unblemished history of yeomen service to the community in Goa for over 30 years, to bear, both in terms of money and in terms of its huge reputation.

The High Court in contempt jurisdiction had no competence to go into the issue of erosion

XXXII. BECAUSE based on affidavits made by the Respondents and the experts cited by them, the High Court, firstly wrongly got into the issue of erosion in the contempt proceedings and secondly committed an error of accepting the argument that removal of the wall would lead to environmental degradation.

XXXIII. The issue of erosion was first used to justify adopting of a different high tide line in the second GCZMA report, and was dismissed explicitly by the second judgment.

XXXIV. The erosion argument was also raised in the SLP, and thereafter, before the NCSCM. However, it was rejected in both proceedings.

XXXV. It is only after the NCSCM report that the hotel and the GCZMA began taking recourse on grounds of erosion, i.e., on a fresh ground, linking it for the first time with the second direction provided in the first judgment. Before the NCSCM report, this had never been a considered either by the GCZMA or the Respondent Hotel. As can be seen from the dates, the move to call up the second direction to sabotage the first was made only after the NCSCM report was received and the structures to be demolished were clearly identified. The decision of the GCZMA was finalized in 2021. All parties were already in contempt 4 weeks after the receipt of the NCSCM report in August 2019. All actions thereafter could only be continuation of contempt.

XXXVI. BECAUSE if the Court was of the opinion that no contempt had been committed by the refusal of GCZMA to demolish the wall, it could have simply dismissed the contempt petition

XXXVII. BECAUSE in contempt jurisdiction the Court could not alter the original judgment of 2018 revised, which is what it has done in effect.

XXXVIII. BECAUSE in contempt jurisdiction the Court can only go into whether there has been wilful and deliberate non-compliance of a courts order. It could not go into the merits of the earlier decision and purport to alter it, which the impugned judgment has done, without explicitly varying the original two judgments.The result is that, and the record now shows, that there exists a direction of the High Court to demolish the wall, which was upheld by this Hon'ble Supreme Court, but which remains unimplemented.

XXXIX. BECAUSE two judgments in writ jurisdiction have upheld demolition of the compound wall directly or indirectly, whatever the consequences, which has been upheld by this Hon'ble Court. The High Court in contempt jurisdiction could not to nullify the order passed in writ jurisdiction which the impugned order has done. As a result impugned judgment in a contempt jurisdiction has rendered both judgments writ jurisdiction worthless in respect of a specific CRZ violation.

XL. BECAUSE the High Court committed an error in holding that the Contempt Petition was vague, casual and reckless which finding was rebutted by the High Court itself when it quoted the grounds raised in the contempt petition in para 30 of the impugned judgment. None of the grounds raised in para 30 are casual or reckless and none is wrong in fact

or law. All grounds were raised in defence of the High Court's orders dated 2015 and 2018.

XLI. BECAUSE both the first directions issued in both judgments dealt with the issue of addressing the CRZ violations. The Court, by its dismissal of the Contempt Petition now holds that the second direction in the first judgment overrides both the first directions in both judgments which defies logic and implies that the first judgment directed demolition and then put in a second direction to veto the first direction. This is wholly incorrect, as the first judgment clearly included the swimming pool and compound wall in the list of prima facie violations.

XLII. At no stage did the judgment require the authorities not to remove the wall even if it would assumedly lead to erosion of the beach.

XLIII. There cannot be a finding in a contempt petition that can grant legitimacy to an illegal wall. Till date, the wall remains illegal. A judgment in a contempt petition cannot confer legality to something which has been held to be illegal.

6. **GROUNDS FOR INTERIM RELIEF**:-

BECAUSE while passing the Impugned Order, the Hon'ble Court has dismissed the Contempt Petition with a direction that Rs. 50,000 costs to be paid by the Petitioner. The Petitioner paid the costs under protest, without prejudice to file the present SLP.

7. **MAIN PRAYER**

It is therefore, most respectfully and humbly prayed that this Hon'ble Court may be pleased to:

a) To grant Special Leave to Appeal against the impugned Final Judgment and Order dated 30.09.2022 passed by the Hon'ble High Court of Bombay at Goa in Contempt Petition No.2 of 2020;

b) Pass such further and other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

8. **PRAYER FOR INTERIM RELIEF**

It is therefore, most respectfully and humbly prayed that this Hon'ble Court may be pleased to:

a) Stay the impugned Final Judgment and Order dated 30.09.2022 passed by the Hon'ble High Court of Bombay at Goa in Contempt Petition No.2 of 2020;

b) Specifically delete the remarks that the contempt petition was "an abuse of the process of law," and the Petitioner are to be visited with costs of Rs.50,000

c) Direct the refund of the sum of Rs. 50,000 with interest, paid by the Petitioner pursuant to the impugned order without prejudice to its rights to challenge the same

d) Pass such further and other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS THE APPELLANT AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN BY:
MS. NORMA ALVARES, ADVOCATE

SETTLED BY:
MR. ANAND GROVER, SENIOR ADVOCATE

FILED BY:

(**NUPUR KUMAR**)
Advocate for the Petitioner

New Delhi
Drown on:- 31.12.2022
Filed on:- 05.01.2023

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2023

IN THE MATTER OF:

THE GOA FOUNDATION PETITIONER

VERSUS

SHRI PARIMAL RAI & ORS. RESPONDENTS

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the questions of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Petitioner/person authorized by the Petitioner whose Affidavit is filed in support of the Special Leave Petition.

FILED BY:

(NUPUR KUMAR)
Advocate for the Petitioner(s)

NEW DELHI
FILED ON : 05.01.2023

NOTARY
Janardhan S. Parshekar
Mapusa Bardez - Goa
Regd. No. 218/10
Expiry Date
29/01/2025
GOVT. OF GOA (INDIA)

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2023

IN THE MATTER OF:

The Goa Foundation .....PETITIONER

VS.

Shri Parimal Rai & ors ...RESPONDENT

AFFIDAVIT

I, Dr Claude Alvares, S/o late Peter Alvares, aged 74 years, Secretary, the Goa Foundation, St. Britto's Apartments, Feira Alta, Mapusa, Goa-403 507, do hereby state and solemnly affirm as under:

1. That I am the Secretary of the Petitioner in this Special Leave Petition. As such, I am fully conversant with the facts of the case and thus capable of swearing to this Affidavit on my behalf and on behalf of the other Petitioners.

2. That I have read and understood the contents of the accompanying Special Leave Petition (Paras 1 to 8) and list of dates (Pages B to P), Annexures and Applications and I say that the contents therein are true to my personal knowledge and belief. That the annexures of the accompanying petition are true copies of their respective originals.

3. That the present affidavit is of the same or subsequent date of drafting of the Petition.

4. That no part of the present affidavit is false and nothing material has been concealed therefrom.

Solemnly affirmed at Mapusa, Goa,

This the 31st day of December 2022

THE GOA FOUNDATION Reg. No. 23/GOA/86

DEPONENT

NOTARY Janardhan S. Parshekar Mapusa Bardez - Goa Regd. No. 218/10 Expiry Date 29/01/2025 GOA (INDIA)

SOLEMNLY AFFIRMED AND VERIFIED BEFORE ME BY Dr Claude Alvares WHO IS IDENTIFIED BEFORE ME BY WHOM I PERSONALLY KNOW Regd. No. 6086/02 Dated 31/12/02

JANARDHAN S. PARSHEKAR
NOTARY AT MAPUSA, BARDEZ - GOA
STATE OF GOA INDIA

VERIFICATION

Verified at Mapusa, Goa on this the 31st day of December, 2022 that the contents of this affidavit are based on the information derived from the records and also on the basis of the information received and believed to be correct. No part of it is false and nothing material has been concealed or suppressed there from.

THE GOA FOUNDATION Reg. No. 23/GOA/86

DEPONENT

NOTARY Janardhan S. Parshekar Mapusa Bardez - Goa Regd. No. 218/10 Expiry Date 29/01/2025 GOVT. OF GOA (INDIA)

NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL

SOLEMNLY AFFIRMED AND VERIFIED BEFORE ME BY Dr. Claude Alvares WHO IS IDENTIFIED BEFORE ME BY WHOM I PERSONALLY KNOW Regd. No. 6086/02 Dated 31/12/02

JANARDHAN S. PARSHEKAR
NOTARY AT MAPUSA, BARDEZ - GOA
STATE OF GOA INDIA

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 333 OF 1993

1. The Goa Foundation,
   being a Registered Society registered
   under the Provisions of the
   Societies Registration Act, 1860
   having its office at Rm.7,
   above Mapusa Clinic,
   Mapusa 403 507 Goa.

2. George Rebello,
   Indian Inhabitant,
   residing at Albamar Apartments,
   2nd Floor, Miramar, Goa 403 001. ... Petitioners

V e r s u s

1. The North Goa Planning and Development
   Authority, a body corporate having
   perpetual succession and common seal,
   with its office at Rua da Ourem,
   Panaji Goa.

2. State of Goa,
   through its Chief Secretary,
   Secretariat, Panaji Goa.
   C/o the Advocate General,
   Panjim Goa.

3. The Goa State Committee on Coastal
   Enviornment through its member-secretary
   at Town and Country Planning Department,
   Old GMC Complex, Panaji 403 001.

4. The Town and Country Planning Board
   through its Member-Secretary,
   Town and Country Planning Department,
   Ganga Niwas, Panaji Goa.

5. Panjim Municipal Corporation
   through its Administrator, Municipal Bldg.,
   Panaji Goa.

6. Captain of Ports, Captain of Ports Building,
   Panaji Goa.

7. Palm Hotel India Ltd.,
   C/o Hotel La Paz,
   Swatantra Path,
   Vasco-da-Gama, Goa.

8. Secretary,
   Ministry of Environment & Forests,
   Paryavaran Bhavan,
   C.G.O. Complex,
   Lodi Road, New Delhi 110 003.

9. Goa Marriott Resort,
   3rd Floor, Karina Chambers,
   St. Inez, Panaji Goa. .... Respondents

Mrs. Norma Alvares, Advocate for the petitioners.

Mr. H. D. Naik, Advocate for respondent no.1.

Mr. D. Lawande, Government Advocate with Mr. P. Dangui, Addl. Government Advocate for respondent nos. 2, 3, 4 and 6.

Mr. Mahesh Amonkar, Central Government Standing Counsel for respondent no.8.

Mr. R. Dada, Senior Advocate with Mr. T. N. Subramanian, Senior Advocate with Mr. Firdosh Pooniwalla, Mr. Rishit Badiani and Mr. Jitendra Supekar, Advocates for respondent nos. 7 and 9.

Coram:- F. M. REIS &
K. L. WADANE, JJ

Judgment reserved for pronouncement : after written submissions filed by Peti- : tioners; written submissions filed by Respondent nos. 7 and 9 and documents /Plan by Respondent no. 1. : 27.02.2015

Judgment pronounced on : 29.06.2015

J U D G M E N T (Per F. M. Reis, J)

The above Writ Petition filed by the petitioners inter-alia prays for an appropriate writ to call for the records relating to the sanctions granted vide order dated 29.11.1991 and subsequent revisions/ extensions dated 27.3.1995, 1.10.1996 and 16.07.1997 to the construction of the respondent no.7 and after going through the legality of such permissions to build, if any, quash and set aside the same. The petitioners have also sought for a relief to quash the approval of the respondent no.3 dated 14.06.1991 and also for a direction to the respondent nos. 1, 2 and 5 to demolish any construction raised on the said plot as a consequence of such permissions.

2. Briefly, the facts of the case based on the record in the above Petition are that the respondent no.2 - Government of Goa issued an advertisement inviting offers for the construction of a hotel in Panaji at Gaspar Dias beach on 07.03.1977. On 28.03.1977, M/s. V. M. Salgaonkar Private Limited submitted a proposal for the construction of a luxury hotel at Gaspar Dias beach at Panaji and sought for additional land for that purpose. The lease deed was executed on 30.04.1979 by the respondent no.2 with M/s Palm Hotels (India) Ltd., for 99 years for an annual rent of Rs.43,277.30 paise for an area of 15,666 square metres at Gaspar Dias beach. The Government thereafter acquired additional plots for the construction of the hotel on 25.06.1981.

Thereafter, on 30.01.1984, the then Lt. Governor of Goa raised an objection to the construction of a hotel at the site as the land was required for a public recreation and that the hotel building would be close to the water of Mandovi river. Subsequently, an agreement was signed between the respondent no.2 and Palm Hotels (India) Ltd.,- respondent on.7 regarding the construction of a luxury hotel which inter-alia stipulated that the company shall undertake the construction of a hotel within one year from the date on which the possession of the land was given. It is also contemplated therein that the respondent no.7 shall conform to all the rules and guidelines made by the Government from time to time for the preservation of the ecology and the environment and fulfill other statutory requirements existing in law. Thereafter, somewhere on 09.02.1987, the Captain of Ports wrote to the Chief Town Planner that he expects that the hotel building will be beyond the highest high tide water marks and further that he is concerned that the hotel building should not cause hindrance to navigation and an undertaking should be taken from the hotel promoter to make appropriate changes. The Panjim Draft Outline Development Plan (ODP) was notified for the public objections and the hotel area was zoned as recreational somewhere on 27.02.1987. The respondent no.7 raised an objection for the zoning and requested that the zone be earmarked as commercial. The Ecological Development Council on 04.03.1987 approved the hotel project in principle provided the zone is changed under the draft ODP. The said committee was a high powered council

constituted in 1982 to scrutinize the proposals for development from environment point of view. The Town and Country Planning Board on 17.08.1987 appointed a sub-committee to scrutinize the objections to the draft ODP and the Panjim final ODP was notified on 11.01.1990 whereby the hotel site is zoned as commercial. The respondent no.2 constituted the Goa State Committee on Environment (GSCE) which replaced the EDC and ECC on 26.07.1990 and their decisions were placed for review before the GSCE. It is further the contention of the petitioners that on 19.02.1991, CRZ Notification was issued under the Environment Protection Act, 1986 whereby the areas within 500 metres of the High Tide Line on the sea coast and within 100 metres from the banks of the tidal rivers were declared as CRZ and are subject to the norms of the CRZ Notification. It is further the contention of the petitioners that the hotel of the respondent no.7 is within 100 metres of the High Tide Line on the bank of the river Mandovi. On 14.06.1991 the application of the respondent no.7 is approved in principle by GSCE and listed under any other item in the agenda of the 4th meeting of GSCE. The Town and Country Planning Board approves a 10 metres wide road along river Mandovi from Youth Hostel to Yatri Niwas on 20.06.1991. The Ministry of Environment objects to GSCE's decision to approve the hotel project of the respondent no.7 on 26.08.1991 and requested that the case be deferred and the details of the project be made available to the Ministry of Environment and Forests to look into the violations and overall environmental management. But however, GSCE rejects the

request of the Ministry of Environment and Forests for details of the hotel project and the approval has been conveyed to the party and the plans were approved as the site falls in CRZ II of Panaji. The Panjim Planning and Development Authority (PPDA) grants development permission to the respondent no.7 for the construction of a hotel on Chalta Nos.14(p), 16(p), 17, 18, 1(p) of P.T. Sheet Nos. 98 and 116 of Miramar on 29.11.1991. The Panjim Municipal Council issued a construction licence on 20.12.1991 and the Tree Officer granted permission for felling of trees on the plot on 29.06.1992. The conversion sanad was thereafter issued on 24.07.1992 wherein according to the petitioners the land is described as sandy and part of Campal beach. The construction was thereafter started in September, 1992 and there were protests on 15.04.1993 by the Miramar residents with the Captain of Ports. Thereafter on 23.06.1993 the above Writ Petition came to be filed along with Writ Petition Nos. 331 and 332 of 1993. It is further the contention of the petitioners that the Chief Town Planner filed his affidavit on 03.08.1993 to which two maps were filed as annexures, both of which are highly misleading. It is further their contention that the Chief Town Planner deliberately showed the Palm Hotel to be outside CRZ although the joint site inspection report has shown the distance of the building as 23 metres from the High Tide Line. It is further also brought to our notice that the Writ Petition was admitted by this Court on 30.08.1993 and the Court directed that a separate application be filed for interim relief and accordingly, Civil

Application No. 180/1993 came to be filed for stay of the construction which was rejected on 16.09.1993. It is also their case that the interim order has observed that the plan produced by the Chief Town Planner shows the site of the hotel as away from the High Tide Line of the Arabian Sea though the order also records that the construction is at a primary stage. A SLP was filed before the Apex Court by the petitioners which came to be dismissed by order dated 10.01.1994 and the order records that any observation made by the learned Judges or this Court for not interfering with the matter may not be construed to have any prejudice to the stand taken by the petitioners at the time of the final disposal of the petition. The CRZ amendment came on 18.08.1994 reducing CRZ along tidal rivers to 50 metres from the High Tide Line. In view of the complaints from the residents of Miramar, the Captain of Ports inspected the Palm hotel's plot and it is the contention of the petitioners that it was noticed that the excavated sand was dumped between the high water level and low water level and due to dumping of the sand the access from the Youth Hostel to Miramar was blocked. Thereafter, the Ministry of Environment and Forests constituted a committee comprising of the officers from the Ministry of Goa Government and two NGOs to inspect the violations of CRZ Notification in Goa and submitted a report and the interim site visit report was submitted to the Ministry of Environment and Forests on 30.10.1994 which according to the petitioners records the spot observations and discussions with the concerned State Authorities. It is further their case

that the report discloses that the construction of the respondent no.7 is abutting the waterfront and the site is categorized as a beach and affected by tidal action and that the construction is coming up on the seaward side of an existing block of the residential buildings and that there is no road between sea and the construction site. The report discloses that the construction extended right up to and within the High Tide Line and as such the wave impact was impeded by the building walls of one part of the construction. Thereafter, the petitioners filed M.C.A. No. 403/94 for stay of the construction in the above Writ Petition and this Court dismissed the said application on 20.02.1995 once again noting the stand of the Goa Government that the High Tide Line is about 1.5 km from the site of the project of the respondent no.7 and hence the hotel does not lie within the CRZ. The Goa Planning Development Authority thereafter renewed the permission on 27.03.1995 for the project and the Apex Court declared the clause in the Notification reducing CRZ along the rivers to 50 metres as illegal on 18.04.1996. The Coastal Zone Management Plans for Goa is approved on 27.09.1996 and the area of the hotel site is zoned as CRZ- II. The revised plans were thereafter approved on 01.10.1996. On 16.07.1997, NGPDA approved the revised plans of the project subject to a condition that no construction on the western side of the existing building line towards the Mandovi river and thereafter on 16.09.1997, referred the application to construct the retaining wall filed by the respondent no.7 along Mandovi river bank to the Goa State Committee of Coastal

Environment. Another application was filed on 29.01.1997 for stay of the construction and this Court observed in the order dated 25.07.1997 that it is necessary to have a location map on record which would correctly show the location of the disputed project vis-a-vis the existing structure on the bank of the river Mandovi including Yatri Niwas, Youth hostel, Indoor Stadium and Kala Academy so as to examine the disputed construction coming towards the seaward side or landward side. Accordingly, a Commissioner was appointed to make a report with that regard. As the previous Commissioner expressed some difficulty, a new Commissioner was appointed on 24.11.1997. The report was submitted on 12.12.1997 along with location plan and the Writ Petition was posted for hearing on 23.06.1998. Thereafter, the learned counsel of the petitioners prayed that all CRZ matters be taken up together and this Court delivered a judgment on 13.07.2000 in Gulf Goans Hotel V/s Union of India. The said judgment was challenged before the Apex Court in Special Leave Petition and thereafter on 04.02.2002 at the request of the learned counsel, the above Writ Petition was adjourned sine die. The request of the petitioners to fix the matter for hearing was also rejected on 05.10.2012 and ultimately, the Apex Court delivered a judgment on 22.09.2014 in the matter of Gulf Goans case thereby setting aside the judgment of this Court.

3. Mrs. N. Alvares, the learned counsel for the petitioners has raised the following contentions.

The learned counsel has pointed out that the construction put up by the respondent no.7 violates the CRZ Notification of 1991 as according to her admittedly the application for such development was filed by the respondent no.7 after the coming into force of the CRZ Notification of 1991 in February, 1991 and as such, as the hotel construction project comes within a distance of 100 metres from river bank, the requirements of CRZ- II have not been complied with by the hotel project of the respondent no.7. The learned counsel has also taken us through the affidavit filed by the Government Officials as well as the submissions at the time of the disposal of the interim application to point out that the authorities have committed a fraud in the interpretation of the relevant provisions of the Notification of 1991 which clearly discloses the illegal malice of the Government Authorities to manipulate the consideration applicable to the project within CRZ areas in order to grant permissions to the respondent no.7. The learned counsel further pointed out that there was collusion between the Government/respondent no.2 and the respondent no.7 in misleading the correct facts in issue by filing documents and affidavits. The learned counsel further pointed out that the Government Officers have deliberately feigned the correct position by claiming that the hotel project comes within a distance of 1.5 km from the High Tide Line overlooking the provisions of the Regulations as well as the intention in constituting CRZ areas to allow the hotel project of the respondent no.7. The learned counsel further pointed out that by the development

carried out by the respondent no.7, the access of the public to the Miramar beach has been obstructed. The learned counsel further pointed out that for the construction of a hotel project the sand dunes have been removed thereby affecting and degrading the area which is ecologically fragile for erosion. The learned counsel further pointed out that even the vegetation at the site discloses that the said dunes have been malafidely removed by the respondent no.7 so that the evidence with that regard would vanish. The learned counsel has minutely and elaborately taken us through the relevant provisions of the CRZ Notification as well as different judgments of the Apex Court and this Court to advance her contention that the Government Authorities have fraudulently granted permission for the hotel project in violation of the relevant provisions of law. The learned counsel further pointed out that while disposing of the application for interim relief, this Court was mislead to accept the contention of the respondents that CRZ restrictions were only applicable to 500 metres from the High Tide Line of the Arabian sea. The learned counsel further pointed out that this Court appointed a Commissioner to find out the situation at loco. The learned counsel has taken us through the Commissioner's report to point out that the swimming pool constructed by the respondent no.7 is hardly at a distance of less than 20 metres from the High Tide Line from the bank of the river. The learned counsel has also pointed out that even the construction of a hotel is at a distance of 30 metres from the bank of the river which clearly shows that the construction put up by the

respondent no.7 is illegal and cannot be allowed to stand. The learned counsel has thereafter pointed out that the Town Planning Authorities have approved the plans of the respondent no.7 on the basis that the areas were coming within CRZ -II but however, the learned counsel has thereafter taken us through the plans produced on record to point out that in between the hotel project and the river a proposed road is being shown which is not existing nor was approved by the concerned authorities. The learned counsel further pointed out that this itself is a fraud committed by the respondent no.7 to mislead the authorities to obtain the permissions for the hotel project at the site. The learned counsel thereafter pointed out that as there was no approved road towards the seaward side of the hotel, the question of contending that the construction is within the norms of CRZ II is totally farfetched. The learned counsel further pointed out that there is no existing authorised structure towards the seaward side of the hotel project of the respondent no.7 and as such the permissions granted in favour of the respondent no.7 totally violate the CRZ Notification and consequently, the respondent no.7 deserves to be ordered to demolish the construction. The learned counsel has relied upon different judgments of this Court as well as taken us through the material on record to contend that the reliefs sought by the petitioners deserve to be granted.

4. On the other hand, Mr. R. Dada, learned Senior Counsel appearing for respondent nos. 7 and 9 has disputed all the contentions

advanced by the learned counsel appearing for the petitioners. The learned Senior Counsel has pointed out that the project of the respondent no.7 was sanctioned prior to the coming into force of the Notification of 1991. It is the contention of the learned Senior Counsel that the process was conceived on 30.04.1979 when the lease in favour of the respondent no.7 was registered at the instance of the respondent no.2. It is further his case that the project of the respondent no.7 was approved and cleared prior to 19.02.1991 and that all the projects approved prior to the said date from the environmental point of view are not affected by the CRZ Notification of 1991. It is further his contention that once the project has started then 1991 Notification would have no application. The learned Senior Counsel further pointed out that the interpretation of the Notification of 1991 by the Government of Goa inter-alia was that the restrictions in the Notification would not apply to any project which was beyond 500 metres from the High Tide Line i.e. from the point where the sea enters the mouth of the river. The learned Senior Counsel has taken us through the affidavit of the Town Planner N. Pandalai as well as of R. N. Ray to point out that the State Government had always taken a stand that the hotel project of the respondent no.7 was not affected by the CRZ Notification. The learned Senior Counsel further pointed out that the State Government was the appropriate authority in the matter of granting development permission under the Notification 1991 and as such the approvals are valid till CZMP was approved. The learned Senior Counsel further pointed out that the

exposition of law by the authorities who are required to implement the Notification is given high degree of weightage by the Court and in support of his submission, the learned Senior Counsel has relied upon the judgment of the Apex Court. The learned Senior Counsel further pointed out that the State would require to prepare Coastal Zone Management Plans (CZMP) to implement the CRZ Notification of 1991 and during the interim period the State Government was the appropriate authority to grant such permission. The learned Senior Counsel further pointed out that the approval of the CZMP does not come in the way of the State Government for re-validating a plan or granting a deviation. The learned Senior Counsel thereafter has taken us through the amendment of the CRZ Notification on 16.08.1994 and the salient features of the amendment was that the High Tide Line was required to be demarcated uniformly in all parts of the country. The learned Senior Counsel further pointed out that the distance up to which the development along the rivers, creeks and backwaters is to be regulated would be governed by the distance up to which the tidal effect of sea is experienced in the rivers, creeks or backwaters, as the case may be which should be clearly identified in the Coastal Zone Management Plans. It is further his contention that the permission to the respondent no.7 was granted prior to the amendment of 16.04.1994. The learned Senior Counsel further pointed out that the interpretation of law by the Government found favour with this Court while disposing of the interim application. The learned Senior Counsel thereafter pointed out that the

petitioners themselves have filed a Writ Petition No. 115 of 1992 wherein the petitioners have challenged the decision in the meeting of 20.11.1991 and that at the time of issuing Rule this Court gave the petitioners leave to add parties which the petitioners for reasons best known to them failed to add any parties to the said petition. The learned Senior Counsel further pointed out that this Court by judgment dated 15.07.1998 decided the said Writ Petition and the petitioners did not raise any contention with regard to the validity of the decision taken on 20.11.1991 and as such, it has to be assumed that the petitioners had given up their challenge to the decision of the Government of Goa in the meeting of 20.11.1991 to the project of the respondent no.7. The learned Senior Counsel further pointed out that the conduct of the petitioners is not bonafide and has taken us through the affidavit of Mr. Mukerjie on behalf of respondent no.7 to point out the averments therein that the petitioners have been selective in choosing to file petitions challenging the development projects. The learned Senior Counsel has also pointed out that there is no reference in the above petition with regard to the filing of the earlier petition in the year 1992 which would show that the petitioners have accepted that the projects on the Mandovi river were approved by the decision of the Government on 20.11.1991 by relying upon its own interpretation of the CRZ Notification of 1991 which was valid till CZMP was approved. The learned Senior Counsel has thereafter taken us through the petition to point out that there are no particulars of the alleged fraud brought by

the petitioners. The learned Senior Counsel also submits that the interim report of the Ministry of Environment and Forests cannot be relied upon as it is contrary to the principles of natural justice. The learned Senior Counsel further pointed out that the contention of the petitioners that there is a violation of the norms prescribed for CRZ II is totally erroneous as according to him there is an authorised structure between the hotel project of the respondent no.7 and Mandovi river which clearly suggests that the whole construction activity carried out by the respondent no.7 is in accordance with law and the sanctioned plans. The learned Senior Counsel has thereafter minutely taken us through the relevant provisions of law as well as the situation at loco which we shall deal with while examining the contentions of the learned counsel of the parties, to point out that all the requirements of CRZ II are duly complied with by the hotel project of the respondent no.7. The learned Senior Counsel further justifies the re-validation or revision of the plans dated 27.03.1995, 01.10.1996 and 16.07.1997 on the basis of ***Indian Council for Enviro-Legal Action*** case. The learned Senior Counsel has also pointed out that even the swimming pool and compound wall constructed by the respondent no.7 which have been duly approved by the statutory authorities do not create any breach of the provisions of the CRZ Notification. The learned Senior Counsel further pointed out that in any event the construction activity carried out by the respondent no.7 is with a colour of a legal permissions and as such the question of directing the demolition of such construction activity is totally absurd

and cannot be accepted. The learned Senior Counsel has also pointed out that the respondent nos. 7 and 9 have incurred heavy expenditure in putting up such project and even the interim relief was refused and as such grave injustice would occasion to the said respondents in case any relief is granted to the petitioners. The learned Senior Counsel as such submits that the petition be rejected.

5. Mr. D. Lawande, learned Government Advocate appearing for respondent no.2 has pointed out that the area comes within the CRZ II area and according to him the permissions have been duly granted by the authorities. The learned counsel further pointed out that the interpretation of the provisions at the stage of granting of permission is in consonance with the stand taken by the State Government with regard to CRZ areas along river having tidal effect. The learned counsel further pointed out that the permissions have been duly granted and the construction has already been completed and as such according to him the question of directing the demolition of the construction would not arise at all. The learned Government Advocate however did not dispute that the permissions were granted to the respondent no.7 based on the norms of CRZ II in terms of CRZ Notification of 1991.

6. Mr. H. D. Naik, learned counsel appearing for respondent no.1 has also supported the contention of Mr. D. Lawande, learned Government Advocate appearing for the respondent no.2. The learned

counsel has also produced the plan of the concerned construction at the time of revision in the year 1996. The learned counsel as such submits that no case is made out by the petitioners for any relief.

7. Mrs. N. Alvares, learned counsel appearing for the petitioners has disputed the contention of the learned Senior Counsel appearing for the respondent nos. 7 and 9 by pointing out that even during the pendency of the earlier petition in 1992 when the petitioners learnt about the development activities intended by the respondent no.7 the petitioners immediately in the year 1993 filed the present petition. The learned counsel further pointed out that this itself suggest that the petitioners have not delayed as no development had in fact started when the petition was filed. The learned counsel further pointed out that the contention that the petitioners are selective is totally erroneous as according to her the petitioners have filed petitions after the disposal of the Writ Petition of the year 1992 against most of the hotels which were contrary and in breach of the CRZ Notification. The learned counsel further pointed out that as far as the respondent no.7 is concerned, as the petition was already filed and pending adjudication there was no need of filing another petition. Without prejudice to the above submission, the learned counsel has pointed out that even assuming that for the purpose of finding out an authorised legal structure one can see on both sides of the plot of the respondent no.7, evidently, according to her the swimming pool and compound wall comes within

the no development zone of the CRZ area. The learned counsel further pointed out that even the hotel structure itself comes within the no development zone area but however considering that the hotel has already been constructed, the question of allowing the swimming pool and compound wall in the no development zone in the CRZ area would be totally contrary to the environment laws. The learned counsel further pointed out that as such this Court should ensure that the access of the public along the Miramar beach abutting the Mandovi river is not at all jeopardize and further that all the constructions put up in the no development zone in CRZ area along the river bank are ordered to be removed.

8. Before we proceed to examine the main rival contention with regard to the claim of the petitioners that there was an infringement of the CRZ Regulations of 1991, we shall deal with the preliminary contentions raised by Mr. R. Dada, learned Senior Counsel appearing for the respondent nos. 7 and 9.

9. The first contention of the learned Senior Counsel is that in view of the earlier Writ Petition No. 115 of 1992 filed by the petitioners, the above petition is barred by principle of res judicata. The learned Senior Counsel has pointed out that there was a challenge to the decision in the meeting of 28.11.1991 of the respondent no.3 wherein the project of the respondent no.7 was also approved. The learned

Senior Counsel has further submitted that there were averments in the said Writ Petition to suggest that the petitioners were also raising a grievance with regard to 10 metres set back being fixed by the concerned authorities. The learned Senior Counsel as such submits that the issue with regard to the licence for the project of the respondent no.7 could very well be raised by the petitioners in the earlier petition and as such according to him the present petition is barred by principle of constructive res judicata in terms of Section 11 of the Civil Procedure Code.

10. It is not disputed that the present petition was filed immediately after the petitioners obtained an information about the plans which were sanctioned by the concerned authorities in respect of the hotel project of the respondent no.7. The respondent nos. 7 and 9 admittedly were not parties to the earlier petition. The petitioner no.2 also was not a party to the said petition. Even before the above Writ Petition No. 115 of 1992 was finally disposed of on 15.07.1998, the petitioners filed the present Writ Petition on 23.06.1993. Apart from that, on perusal of the earlier judgment passed by this Court dated 15.07.1998, it is clearly stated therein that the grievance of the petitioners was the approval of the projects along the coastal line without preparing the coastal zone management plan. As in the meanwhile, the Central Government had approved the management plan on 27.09.1996, this Court disposed of the said Writ Petition. In such

circumstances, the contention of Mr. Dada, learned Senior Counsel appearing for the respondent nos. 7 and 9 that the contentions sought to be raised by the petitioners in the present Writ Petition were directly and substantially in issue in the said Writ Petition cannot be accepted. Apart from that, as already pointed out herein above, the respondent nos. 7 and 9 nor the petitioner no.2 were parties to the said Writ Petition. Besides, the petitioners filed the above Writ Petition by raising the claims during the pendency of the earlier Writ Petition. In such circumstances, the judgment of the Apex Court relied upon by the learned Senior Counsel appearing for respondent nos. 7 and 9 reported in ***1985(2) SCC 670*** in the case of ***Daman Singh and others Vs State of Punjab*** is not applicable to the facts in the present case. The Apex Court in the judgment reported in ***AIR 2001 SC 2134*** in the case of ***M/s International Woollen Mills V/s M/s. Standard Wool (U.K.) Ltd.***, has observed at para 10 thus :

> "**10**. ….....Mr. Hingorani however submitted that this case would be covered by Explanation IV to Section 11 of the Code of Civil Procedure. He submitted that in the earlier Application the defence regarding non -compliance of Section 13(b) could have been taken but had not been taken. He submitted that it was not open to the Appellants to take such a defence in a subsequent Application. In our view there is no substance in this submission. Explanation

> IV to Section 11 of the Code of Civil procedure would have come into play only if some decision had been finally given before the second Application was filed. In that event it could have been urged that all available points should have been urged before that decision was given. In this case the second Application was filed before any decision on the first Application was given. The Appellants could have, instead of filing a second Application, amended their first Application and taken these pleas in that Application itself. Had they amended the first Application there would be no bar of res-judicata or constructive res judicata. If that be so one fails to understand how the second Application was barred by principles of res-judicata or constructive res- judicata. To be remembered that the Orders were passed after hearing arguments on both the Applications. Under such circumstances no question arises of their being any res-judicata or constructive res-judicata."

Admittedly, the present Writ Petition was filed disputing the permissions granted to the respondent no.7 much prior to the disposal of the earlier Writ Petition when there was no final decision therein and as such the question of contending that the present Writ Petition is

barred by principle of constructive res judicata cannot be accepted. It is also to be noted that the respondent no.7 did not take any steps, if at all they were so interested to take up the above Writ Petition along with the said Writ Petition No. 115 of 1992 though from the records in the present petition they had knowledge about the pendency of such petition. The judgment of the Apex Court relied upon by Mr. Dada, learned Senior Counsel appearing for respondent nos. 7 and 9 reported in ***(1986) 1 SCC 100*** in the case of ***Forward Construction Co. and others Vs Prabhat Mandal (Regd.) Andheri and others*** is not at all applicable to the facts of the present case. The facts therein are that after an earlier petition was finally disposed of, another petition came to be filed by some parties under Article 226 of the Constitution of India seeking almost the same relief. As pointed out herein above, in the present case, the reliefs are different. Besides, the respondent nos. 7 and 9 nor petitioner no.2 were parties to the earlier petition. The infringements pointed out by the petitioners in the present Writ Petition were not directly and substantially in issue nor adjudicated in the said Writ Petition No. 115 of 1992. The principles of res judicata are not otherwise ordinarily applicable to Public Interest Litigation and in such circumstances, we find that the contention of Mr. Dada, learned Senior Counsel appearing for the respondent nos. 7 and 9 that the above Writ Petition is barred by principle of res judicata cannot be accepted.

11. Before we proceed further, we would like to deal with the

contention of Mr. R. Dada, learned Senior Counsel appearing for respondent nos. 7 and 9 with regard to his submission that the petition filed by the petitioners is hopelessly barred by laches. In the present case, the permissions were obtained in November, 1991. The Municipality licence was obtained subsequently. The petition was filed in the year 1993 and the records reveal that when the petition was filed, the construction activities were at a primary stage. Apart from that, it is also the contention of Mr. R. Dada, learned Senior Counsel appearing for the respondent nos. 7 and 9 that the petitioners themselves had already initiated proceedings in the year 1992 with regard to the permissions which were granted despite of the fact that the Coastal Zone Management Plan was not prepared. The licences which were granted on the said date were for different projects along the sea front. It appears that the project of the respondent no.7 was also added to the agenda during the course of the meeting on the said date. Mrs. N. Alvares, learned counsel appearing for the petitioners has pointed out that there was an order of status quo operating in the said earlier petition but however, the fact remains that essentially the grievance of the petitioners in the said petition was to the projects which were approved along the Arabian sea by the authorities. It is also pointed out by Mrs. N. Alvares, learned counsel appearing for the petitioners that immediately after the Coastal Management Zone Plan was prepared and the earlier petition was disposed of, the petitioners had also filed a petition challenging the permissions granted to the hotel project put up

along the sea. But however, in the present case, the petitioners chose to file the above petition as early as in the year 1993 and at the time of the disposal of the interim relief, the Apex Court had clearly noted that the refusal of such interim relief would not affect the contention of the petitioners at the time of the final hearing of the above Writ Petition. As such, it cannot be said that the above Writ Petition is barred by laches.

12. We shall now proceed to examine the contentions of Mrs. N. Alvares, learned counsel appearing for the petitioners that the hotel construction is in violation of the provisions of the CRZ Notification of 1991. In this connection, the first contention of Mr. Dada, learned Senior Counsel appearing for the respondent nos. 7 and 9 is that the CRZ Notification of 1991 is not applicable to the present case as according to him the project was sanctioned prior to the coming into force of the CRZ Notification of 1991 on 19.02.1991. Admittedly, prior to the said date there were no sanctions obtained by the respondent no. 7 from the Town and Country Planning Authorities and the Panaji Municipality for any construction activity. In the judgment of the Division Bench of this Court reported in **1989 (1) Goa Law Times 189** in the case of ***Jimmy Jal Gazdar V/s Panjim Planning and Development Authority and two others***, it has been inter-alia observed that construction of a building comes within the ambit of the expression " development" and that Sections 43 and 44 of the Goa, Daman and Diu Town and Country Planning Act, 1974 makes it

abundantly clear that in case of all constructions/developments carried out after the Act becomes applicable to the area, permission under Section 44 of the said Act must be obtained. The permission or approval obtained for such development under any other law would not be sufficient and a permission under Section 44 of the said Act would be required for such construction activity. In the present case, it is not disputed that the permission under Section 44 of the Town and Country Planning Act, 1974 was obtained on 29.11.1991 and the application was made on 10.05.1991. In such circumstances, the development was permitted after the coming into force of the CRZ notification of 1991 and as such the contention of Mr. R. Dada, learned Senior Counsel that the permissions were obtained much before the coming into force of the CRZ Notification cannot be accepted. The Apex Court in the judgment reported in ***Judgments Today 1992(4) S.C. 538*** in the case of ***Usman Gani J. Khatri of Bombay V/s Cantonment Board and others***, the Apex Court has observed at para 24 thus :

> "**24**. It appears from the record that the Union Ministry of Environment, State of Maharashtra, National Commission on Urbanization and expert working group on Cantonment areas took notice of this problem in the city of Pune and suggested schemes which took the shape of orders issued by the G.O.C.-in-

Chief, Southern Command and amendments in the bye-laws by the Cantonment Board. The petitioners did not acquire any legal right in respect of building plans until the same were sanctioned in their favour after having paid the total amount of conversion charges in lump sum or in terms of sanctioned installments and getting conversion of their land in free-hold tenure. The first scheme of restrictions was brought into force long back on 24th December, 1982 and the second on 26th March, 1984. The petitioners did not submit any fresh building plans in accordance with the first or the second scheme of restrictions. Many of the petitioners have not paid a single pie towards the conversion charges, some of them have paid only few installments but not according to the schedule. In any case, the High Court is right in taking the view that the building plans can only be sanctioned according to the building regulations prevailing at the time of sanctioning of such building plans. At present the statutory bye-laws published on

> 30th April, 1988 are in force and the fresh building plans to be submitted by the petitioners, if any, shall now be governed by these bye-laws and not by any other bye-laws or schemes which are no longer in force now.....”

13. Taking note of the said observations of the Apex Court, we find that in the present case the Goa State Committee of Environment at the 4th meeting held on 14.06.1991 considered the proposal of the respondent no.7 to put up a hotel project in the subject property. This is reflected at para 17 of the affidavit of Mr. N. Pandalai, Chief Town Planner of the State of Goa. At para 18 of the said affidavit, the Town Planner further states that at the said meeting, the effect of the notification of the Government of India concerning the coastal area classification and development regulations framed under Section 3(1) and 3(2) of the Environment Protection Act and Rules 5(3) of Environment (Protection) Rules, 1986 was also considered and it was deliberate to follow the set back line of 10 metres along the river and creeks. By a letter dated 10.10.1991 the Chief Town Planner informed the respondent no.7 that the proposal for construction of hotel was considered and approved by the Goa State Committee Environment in the said meeting and that there is no objection from the planning point of view to construct the hotel with condition that the conversion sanad,

development permission and licence from the Dy. Collector, Member Secretary of CPDA and Panaji Municipal Council should be obtained prior to the commencement of the construction. The order granting permission in terms of Section 44 of the Town and Country Planning Act is dated 29.11.1991 and it clearly states that the application for approval was filed by the respondent no.7 on 10.05.1991. The Panjim Municipal Council granted the requisite permission to put up a hotel project in the subject property on 28.12.1991. The sanad of conversion issued by the Collector under the provisions of Land Revenue Code is dated 24.07.1992. On perusal of the said sanad, it clearly inter-alia discloses that the land in question in Chalta No. 18 of P. T. Sheet No. 98 is sandy and the part of Campal beach is having 218 cassurina forest trees. The said material on record clearly shows that the permissions were applied by the respondent no.7 only after the coming into force of the CRZ Notification of 1991 and consequently, the contention of Mr. R. Dada, learned Senior Counsel appearing for the respondent no.7 that the subject project does not come within the ambit of the CRZ Notification of 1991 cannot be accepted merely because the lease agreement for the project was approved in principle by the concerned authority. The record do not reveal that any application for any permission from the statutory authorities came to be issued in favour of the respondent no.7 prior to the coming into force of the CRZ Notification of 1991 on 19.02.1991. As such, the restrictions as provided under the CRZ Notification of 1991 would clearly be applicable

to the subject project put up by the respondent no.7 in the said property.

14. Mr. R. Dada, learned Senior Counsel appearing for the respondent nos. 7 and 9 earnestly submitted that there was a lease agreement executed in favour of the respondent no.7 pursuant to which the hotel project was initiated. No doubt, the lease agreement was executed in favour of the respondent no.7 but however, on perusal of the terms of such agreement, it clearly provided that the hotel project would have to be put up after obtaining all the requisite statutory sanctions including the environment permissions. In such circumstances, the respondent no.7 was expected to have the permissions to carry out the development in accordance with the statutory regulations including the CRZ Notification of 1991 which had then come into force.

15. Para 3(3)(i) of the CRZ Notification of 1991 inter-alia provides that the Coastal States/Union Territory Administrations shall prepare within a period of one year from the date of such Notification, Coastal Zone Management Plans identifying and classifying the CRZ areas within their respective territories in accordance with the guidelines given in Annexures I and II of the said Notification. Clause (3) (3) (iii) of the said Notification of 1991 further provides that in the interim period till the Coastal Zone Management Plans mentioned in para (3)(3)

(i) are prepared and approved, all the development activities within the CRZ shall not violate the provisions of the Notification. The State Governments and Union Territory Administrations as such had to ensure adherence to these Regulations and violations, if any, would be subject to the provisions of the Environment (Protection) Act, 1986. The said provisions clearly provides that until the Coastal Zone Management Plan is prepared and approved in terms of the said provisions, during the interim period all development activities within the CRZ should not violate the provisions of the said Notification. In the present case, when the project of the respondent no.7 was approved by the authorities in the year 1991, the management plan was not prepared and consequently, any development could not violate the said CRZ Notification of 1991. As such the decision of the Goa State Committee of Environment to maintain a distance of 10 metres from the river bank is clearly in violation of the provisions of the CRZ Notification of 1991.

16. CRZ Notification dated 19.02.1991 came to be issued under Section 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986. By the said Notification, the Government of India, brought into force the Rules/Regulations restricting the development and construction activities in the area known as Coastal Regulation Zone as defined in the said Notification. The statements, objections and reasons proceeded on footing that the said Act of 1986 shows growing concern of the Central Government about the decline in the Environmental quality

as evidenced by increase in the pollution, loss of vegetal coverage and biological diversity and excessive concentration of chemicals in the atmosphere. Section 5 of the said Act gives special power to the Central Government to issue direction in writing from time to time to any person or any authority in connection with the Act which such person is bound to comply with. Under the Act, the Central Government is authorised to monitor the implementation of the Act. CRZ Notification was accordingly issued in the year 1991 in exercise of power conferred under Rule 5(3) of the Environment (Protection) Act, 1986. The Notification came to be issued to protect the ecological balance in the coastal area. Rule 5 provides for prohibition and restrictions of locating of the industries. The Notification constitutes a recognition of the fact that coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action up to 500 meters from High Tide Line and the land between the Low Tide Line and High Tide Line are ecologically vulnerable and require special measures of protection against the environmental degradation. The natural resources are held in trust by the community for the benefit of not merely the present generation but for succeeding generations as well. The uncontrolled march of urbanization poses serious dangers to the preservation of the environment. The policy makers undoubtedly have to preserve the balance between the urgent need for economic development and the preservation of the natural resources against the rapacious denudation. The CRZ Notification makes that balance and dwells upon a specific part

of the environment, and an important one at that which is defined as the Coastal Regulation Zone. Within the Coastal Regulation Zone any development either by a private or a public body must be in accordance with the provisions of the notification. The burden must lie on the developer to establish entitlement before the authority before whom he seeks a sanction. The law imposes an absolute and unconditional obligation upon the developer to make a full, fair and candid disclosure to the sanctioning authority of all the features of the proposed development and to demonstrate that the development will not have a deleterious effect on the environment. The material disclosed to the authority constitutes the basis for the grant of sanction or permission. Consequently, a failure to disclose all the relevant material and information will invalidate the grant of sanction. The provisions such as CRZ Notification of 1991 are conceived in the public interest, the interest which protects the welfare not merely of the society as it exists, but the society of the morrow. The CRZ Notification has provided a categorisation of coastal stretches into CRZ I, II, III and IV which would apply even pending the sanction of the Coastal Zone Management Plan.

17. Before we proceed to examine whether the subject land comes within the Coastal Regulation Zone, we have to note that the CRZ Notification of 1991 clearly declares the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by the tidal action (in the landward side) up to 500 metres from the High Tide

Line and the land between the Low Tide Line and High Tide line as Coastal Regulation Zone and imposes with effect from the date of the Notification the restrictions provided therein. It further provides in the note that the proposed regulation in case of rivers, creeks and backwaters may be modified on case to case basis for the reasons to be recorded while preparing the Coastal Zone Management Plans. However, this distance shall not be less than 100 metres or the width of the creeks, rivers or backwaters whichever is less. On going through the said Notification, the Coastal Regulation Zone as far as the seas are concerned is 500 metres from the High Tide Line whereas, as far as rivers are concerned such distance shall not be less than 100 metres from the High Tide Line. The term High Tide Line means " *the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm".* Hence, the High Tide Line is the line of intersection of land with the water surface. Thus, the stand of the State Government that the distance stipulated in

the CRZ has to be drawn from the Arabian Sea is totally erroneous and not in accordance with the CRZ Notification of 1991. The construction of the Notification by the State Government to mean that such Coastal Regulation Zone is only at a distance of 100 metres from the mouth of the river is also unsustainable as the Notification clearly stipulates a distance of 100 metres for the rivers from the High Tide Line to be a Coastal Regulation Zone. The fact that the project of the respondent no.7 is abutting the Mandovi river which is subjected to tidal effect of the sea is not disputed. In such circumstances, the High Tide Line will be the line on the land up to where the highest high tide reaches at spring tide.

18. In the affidavit filed by Mr. S. K. Mukerjie on behalf of the respondent no.7 he has accepted at para 8 that the impugned planning permission dated 29.11.1991 and the clearance by GSCE dated 14.6.1991 are based on the interpretation, placed on the Coastal Zone Regulation by the said bodies. He has further stated that it is nobody's case that the said regulations have been relaxed in favour of the 7th respondent. He has also stated that in all cases where the proposed development is beyond 500 metres of the High Tide Line as explained in the GSCE decision of its meeting held on 28.11.1991, the said regulations have not been complied with. He has further stated that the interpretation is correct and the Coastal Regulations of 1991 do not apply to the present case as well as other similar situated project on the

bank of Mandovi river. He has also stated in para 6 of the said affidavit that on plain reading of 1991 Regulations, it is clear that GCMP is to be prepared in respect of rivers and estuaries falling within the coastal zone of 500 metres from the High Tide Line and not in respect of the river falling out side the coastal zone. He has also stated that the hotel project is at a distance of southern bank of Mandovi river outside the coastal zone. He has also highlighted the averments of the Chief Town Planner in his affidavit who has stated that the set back from the river front kept by the respondent no.7 is of 23 metres from the plinth which has been constructed. He has also stated at para 9 of the said affidavit which is dated 04.09.1993 that the letter of Additional Magistrate is based on misrepresentation of both the facts and law as merely because the project is at a distance of 23 metres from the bank of river Mandovi does not bring it under the provisions of the CRZ. He has also reiterated that the said regulation pertain to the coastal stretches and not river bank more than 500 metres from the High Tide Line. Thus, the stand taken by the respondent is that CRZ Regulations are not applicable to the projects which are located along the river bank though subject to tidal effect and that in any event it does not affect the projects which are located 500 metres from the Arabian Sea. This stand of the respondent cannot be accepted as it is by misreading the said Notification of 1991 and the note referred to therein. On going through the CRZ Notification of 1991 and the note therein it provides that the restrictions in terms of CRZ Notification of 1991 would also apply to the project at a distance of

100 metres from the High Tide Line of the river subject to the conditions stipulated therein.

19. Mr. Dada, learned Senior Counsel appearing for the respondent nos. 7 and 9 has however relied upon the judgment of the Apex Court reported in ***(*1979) 4 SCC 565** in the case of ***Desh Bandhu Gupta and Co. and Others Vs Delhi Stock Exchange Association Ltd.,*** to advance his contention that the exposition of law by the authorities is given high degree of weightage by the Court. But however, at para 9 of the said judgment, it is observed thus :-

> "**9**. .....In Crawford on Statutory Construction (1940 Edn.) in para 219 (at pp. 393-395) it has been stated that administrative construction (i.e. contemporaneous construction placed by administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction, commonly referred to as practical construction, although not controlling, is nevertheless entitled to considerable weight; it is highly persuasive. In Baleshwar Bagarti v.

Bhagirathi Dass the principle, which was reiterated in Mathura Mohan Saha v. Ram Kumar Saha has been stated by Mukerjee J. thus:

> "It is a well-settled principle of construction that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it..... I do not suggest for a moment that such interpretation has by any means a controlling effect upon the Courts; such interpretation may, if occasion arises, have to be disregarded for cogent and persuasive reasons, and in a clear case of error, a Court would without hesitation refuse to follow such construction." (emphasis supplied)

> Of course, even without the aid of these two documents which contain a contemporaneous exposition of the Government's intention, we have come to the conclusion that on a plain construction of the Notification the proviso permitted the closing out or liquidation of all outstanding transactions by entering into a forward contract in accordance with the rules, bye-laws and regulations of the respondent."

Hence, the construction by the State Government of the CRZ Notification as such does not bind the Court if it is found that the executive construction is not in accordance with the CRZ Notification and

is a clear case of error. Thus, when the executive construction of the provisions are totally erroneous and on its plain reading are not in accordance with the provisions of the Notification, the question of giving any weightage to such construction would not arise. Such a construction by the respondents is unsupportable on the touchstone of an acknowledged or acceptable principle of law though the decision makers may not have a role of actual malice at work in his mind. A person who inflicts an erroneous view on the public in contravention and contrary to the law, is not allowed to say that he did so with an innocence mind. He is taken to know the law and can only act within the laws. It can be described as an act well done with an oblique or indirect object. It is well settled that the State is under an obligation to act fairly, without ill will or malice. Thus, something done without lawful excuse, disregarding the rights of the public and the objects for which such laws have been enacted, can be termed to be with indirect object. It is an act done wrongfully, without reasonable or probable cause. Considering the said aspects in the present case, we find that while examining the environmental aspect for the project of the respondent No.7, though the provisions of CRZ Notification of 1991 were in fact clearly noted, the respondent No.3 chose to direct the concerned Department to change the distance of the No Development Zone and make changes in the plan though the Notification itself provided that until the coastal management plan is approved by the Central Government, all the restrictions imposed under the CRZ Notification of

1991 have to be complied with. It is also to be noted that the representative of the Ministry of Environment had, in fact, brought to the notice of the respondent No.3 that the hotel project of the respondent No.7 would violate the CRZ Notification of 1991. Apart from that the concerned Authorities, while granting the permissions for such constructions, have clearly noted that the project was coming within the CRZ-II area. In such circumstances, the whole exercise by the respondents to take a stand contrary to the express provision of the CRZ Notification of 1991 and assume that the hotel project of the respondent no.7 did not fall within the Coastal Regulation Zone is not at all justified. It is also to be noted that while granting sanction, the Dy. Collector has clearly noted that the substantial part of the land is sandy and that cassurina forest trees which are normally grown on sandy and beach areas are found therein. In such circumstances, the action by the authorities to permit the hotel project without complying with the restrictions of the CRZ Regulations is not at all justified as the said project was within 100 metres from the High Tide Line of the river.

20. Mr. Dada, learned Senior Counsel appearing for respondent nos. 7 and 9 has thereafter pointed out that at the time of deciding the interim relief, this Court had accepted the stand of the Government that the project of the respondent no.7 does not come within the area restricted by the CRZ Notification. But however, the Apex Court while disposing of Special Leave Petition No. 20221 of 1993 by order dated

10.01.1994 has observed that any observation made by the learned Judges or by the Apex Court not interfering with the matter may not be construed to have any prejudice to the stand taken by the petitioners at the time of the disposal of the petition. Even while disposing of M.C.A. No. 403 of 1994, this Court has observed at para 5 that it does not propose to make any observation with regard to the question as to whether the suit construction lies in the Coastal Regulation Zone or not or whether the same is located either on the beach or sea front or along the bank of Mandovi river. Similarly, this Court has observed that it is not concerned at this stage as to whether the suit construction falls in an estuarian area or in the bay being therefore subject to tidal action which by itself would imply that it may be covered by the Coastal Regulation Zone within the meaning of Notification of 1991. In such circumstances, this Court had not examined at that stage whether the hotel project of the respondent no.7 was within the Coastal Regulation Zone. As already pointed out herein above, on the basis of the material on record, it cannot be disputed that the subject project is within the Coastal Regulation Zone. It is also pertinent to note that the stand taken by the State Government at the time of filing of the Writ Petition has not been now supported by the learned Government Advocate appearing for the respondent no.1 who has fairly stated that the hotel project has been examined on the basis that the subject land is within the CRZ II area. No submissions as such in support of such stand based on the CRZ Notification were advanced by the learned Government Advocate.

21. In this connection, we would also like to note the conduct of the statutory authorities while granting the permission to the respondent no.7 for the subject construction. As already observed herein above, the stand of the State Government, which prima facie influenced this Court to refuse an interim relief, that the subject land was beyond 500 metres from the Arabian Sea and as such not covered by the CRZ Regulations is not in conformity with the provisions of the Notification of 1991. We have also taken note of what is the meaning of High Tide Line and that as far as rivers are concerned, the restrictions under the CRZ Notification would apply to a distance of 100 metres from the High Tide Line. Mrs. N. Alvares, learned counsel appearing for the petitioners also brought to our notice that at the time when the permissions were granted to the respondent no.7 there was another permission issued by the same authorities somewhere in the year 1992 for another project which was the subject matter in the case of ***People's Movement for Civic Action through its General Secretary and Anr*** **V/s** ***Goa Coastal Zone Management Authority and others reported in 2014(3) Bom. C. R. 12.*** While examining the plans therein in respect of a project which was abutting the Zuari river which is another main river of the State of Goa and is also subject to tidal effects of the Sea, the project was examined in the context of maintaining a set back of 100 metres from the High Tide Line of such river. It was sought to be contended by Mr. Lawande, learned Government Advocate appearing for the respondent no.1 that the distance from the Arabian Sea and the said

project might have been less than 500 metres. But however, common knowledge would show otherwise. Though at the time of the meeting of the committee to examine the subject project, the restrictions of the CRZ Notification were noticed, the then Chairman of the Committee observed that for the State of Goa, 10 metres set back would be sufficient and directed the Ministry to make guidelines accordingly. This was contrary to the CRZ Notification of 1991. Even when the MOEF raised an objection to the project of the respondent no.7 inter-alia on the ground that the set back as provided in the CRZ Notification of 1991 has not been adhered to, the committee found that the project was being considered on the basis that it came within CRZ II classification. This would also have to be examined in the context that the plans which have been produced on record at the time of the revisions of the plans in the year 1996 and/or 1997 disclosed a proposed road between the hotel project and the river Mandovi. Admittedly, such proposed road was not shown in the Coastal Zone Management Plan which came to be approved in the year 1996. The said road was not an existing road and consequently the depiction by the respondent no.7 of such road is to divert the concerned authorities of the situation at loco. Thus the stand of the respondent nos. 1 to 4 with regard to the CRZ Notification subverts the norms as provided in the CRZ Notification of 1991.

22. Though Mrs. N. Alvares, learned counsel appearing for the petitioners had attributed malafides and malice on the part of officers of

the respondents but however the particulars of such allegations against such officials have not been disclosed in the petition nor are they parties to the above petition. But however, it is well settled that the pleadings are not statute and to examine the legalism of an action taken by the statutory authorities would not rest on elaborate pleadings averred in the petition. On perusal of the averments in the petition, we find that at para 19, there is a specific averment that the decisions of the respondent no.4 with regard to the alleged proposed road was deliberately concealed from the public. There is also material on record of the objections of the Central Government in connection with the subject project. The petitioners also contend that the sanctions were obtained by fraud and manipulation and contrary to the CRZ Regulations. These aspects, read with the facts as enumerated herein above can be taken note of to examine the legality or the malice in law by the authorities in issuing the concerned sanctions to the respondent no.7. Based on the material on record, the Court can draw inferences and conclusions to ascertain as to whether there is any erroneous appreciation of the relevant provisions of law or a gross breach of the restrictions imposed by the concerned Notification. Thus, we find that the conduct of the concerned authorities of the State Government in complying with the well recognized aims and objects of the Environment (Protection) Act and the CRZ Notification of 1991 are found wanting by acting in breach of such enactments. The whole conduct appears to be to allow a hotel project of the respondent no.7 without examining the

norms as provided in the CRZ Notification of 1991. Though it is noted by the authorities that the project is considered as being in CRZ II area nevertheless, an authorised structure has not been identified nor disclosed by the authorities while examining the impugned sanctions. Even in the affidavit filed by the respondents no particulars to that effect have been stated. As the matter is pending from the year 1993, we accordingly found it expedient to locate an authorised structure on the basis of the plans prepared by the Court Commissioner. When malice is attributed to the State, it may not be a case of personal ill-will or spite on the part of the State. The authorities which are the custodians of power cannot be influenced in its exercise by considerations other than that for which the power is vested in them in the first place. Authorities cannot be swayed by any other motive other than exercise its power in accordance with law. The expression legal malice means and implies an action of the State or the authorities not for the purpose of the Act. The conduct of the respondent nos. 1 to 4 and the concerned authorities appears to be aimed solely to enable the respondent no.7 to put up the subject hotel project in the said property without examining the relevant provisions of law. In order to attain such objective, the authorities have indulged in legal stimulation to achieve their goal to allow the hotel project to come up without examining whether the norms of the CRZ II areas have been strictly adhered to. We are accordingly satisfied that the sanctions granted to the respondent no.7 for the hotel project are vitiated by malice in law and colourable exercise of power as the whole

exercise was to reach an end different from the one for which the power has been entrusted to the said authorities.

23. In this context, the Apex Court in the judgment reported in ***(1980) 2 SCC 471*** in the case of ***State of Punjab and another V/s Gurdial Singh and others*** has held at para 9 thus :

> "**9**. The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power-sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions-is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is

> vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in Law when he stated: "I repeat.....that all power is a trust-that we are accountable for its exercise-that, from the people, and for the people, all springs, and all must exist".
>
> Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice- laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power, vitiates the acquisition or other official act."

24. With this background, we shall now examine whether the hotel project put up by the respondent no.7 violates any of the norms and restrictions as provided in the CRZ II areas in terms of Notification of 1991. The categorization of CRZ II provides thus :

> "The areas that have already been developed up to or close to the shore-line. For this purpose, "developed area" is referred to as that area within the municipal limits or in other legally designated urban areas which is already substantially built up and which has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains."

The norms for Regulation of construction activities in CRZ II reads thus :

> (i) Building shall be permitted neither on the seaward side of the existing road (or roads proposed in the approved Coastal Zone Management Plan of the area) nor on seaward side of existing authorised structures. Buildings permitted on the landward side of the existing and proposed road/existing authorised structures shall be subject to the existing local Town and Country Planning Regulations including the existing norms of

FSI/FAR.

(ii) Reconstruction of the authorised buildings to be permitted subject to the existing FSI/FAR norms and without change in the existing use.

(iii) The design and construction of buildings shall be consistent with the surrounding landscape and local architectural style.

It would thus appear that development and/or construction activity is permitted only on the landward side of the existing road or road proposed in the approved Coastal Zone Management Plan of the area or the landward side of the existing authorised structure. But however, no such activity is permissible on the seaward side of such road or authorised structure. Thus, having regard to the said restrictions in CRZ II area the question which arises in the present Writ Petition is to examine whether the hotel project of the respondent no.7 would violate the provisions of CRZ Notification as applicable to CRZ II area. The no development zone as such in a CRZ II area would be from an authorized structure to the H.T.L. of the river.

25. This Court by an order dated 24.11.1997 appointed Mr. F. C. Ribeiro, Chartered Surveyor and Valuer as Court Commissioner in the above Writ Petition inter-alia to submit a map which correctly shows the

location of the disputed property/structure - Palm Hotel in Miramar area vis-a-vis existing structures on the bank of river Mandovi including Yatri Niwas, Youth Hostel, Indoor Stadium and Kala Academy so as to examine whether the disputed structure is coming towards the seaward side or it is towards landward side and make a report on the above points. Accordingly, the report was submitted on 12.12.1997 by the said Court Commissioner. On perusal of the plan attached to the said report, we find that the hotel project of the respondent no.7 is shown to be at a distance of about 22.30 metres and 20.50 metres from the river bank. The plan also discloses an authorised structure in the land adjoining the subject property which is shown as Youth Hostel which is at a distance of 37.8 metres from the river bank. A Light House which is also located in the same adjoining land is shown to be at a distance of approximately 18.00 to 20.00 metres from the river bank. A swimming pool is shown of the subject hotel project very close to the river bank.

26. The Division Bench of this Court in the judgment reported in ***2000(4) Mh.L.J. 708*** in the case of ***Kisan Mehta and others V/s State of Maharashtra and others,*** has observed at paras 28 and 32 thus :

> "**28**. Counsel for the petitioners as well as respondent No. 7 urged before us that the CRZ Notification should be interpreted in the background of the objective which is sought to be

achieved. Commenting on the imaginary line being drawn, it was submitted that if an imaginary line is drawn parallel to the High Tide Line connecting two authorised structures, it may be that if a large tract of land lies between two authorised structures, building activity may be permitted on the entire tract of land, completely defeating the objective of the Notification. It was also submitted on behalf of the petitioners and respondent No. 7 that even if such an imaginary line could be drawn, the plot in question must lie within two authorised structures adjacent to it on either side, and consequently in a cause where an authorised structure existed only on one side, such an imaginary line could not be drawn and no development work or even re-construction could be permitted on such a plot. Counsel for the Bombay Municipal Corporation and the builders on the other hand submitted that such is not the position, if the letter of 8th September, 1998 is carefully read and given meaning. It was submitted that the clarification contained in the letter dated 27th March, 1998 did give an impression that construction of building can be permitted on the landward side of the imaginary line drawn along the existing

authorised structures, meaning thereby that it presupposed existence of authorised structures on both sides of the plot in question. This, however, was further clarified in the letter dated 8th September, 1998, from which it is quite clear that it is not necessary that authorised structures must exist on either side of the plot. He further submitted that an imaginary line drawn in accordance with the Notification and the aforesaid clarifications cannot extend beyond the plot in question, which must be adjacent to an authorised structure at least on one side. In the instant case, therefore, an imaginary line should be drawn from the point closest to the sea of the authorised structure on the adjacent plot belonging to the Bombay Municipal Corporation and such a line should be drawn parallel to the High Tide Line. This imaginary line shall not be drawn beyond the plot in question. If such an imaginary line is drawn as contemplated by the clarifications, it will be found that the building in question is on the landward side of the said imaginary line.

32. The decision of the Madras High Court, as pointed out by Counsel appearing on behalf of respondent No.

> 7, does not refer to any imaginary line, but proceeds on the basis that if to the South-East of the scheme area as well as to its South-West, there were developed areas nearer to the sea than the scheme area, the latter must be considered to be on the landward side of the authorised construction."

27. It is sought to be contended by Mr. R. Dada, learned Senior Counsel appearing for the respondent no.7 that the remnants of stones in the river has to be considered as an authorised structure. We are not at all able to accept the said contention of the learned Senior Counsel appearing for the respondent no.7. It is well settled that when the legislature uses same words in different parts of the same section or statute there is a presumption that the word is used in the same sense throughout. When the draftsman has used the same word or phrase in similar context, it must be presumed to intend it in each place to bear the same meaning. Keeping this in mind, we find that on perusal of clause (i) of CRZ III, it inter-alia provides that the area upto 200 metres from the High Tide Line is to be earmarked as 'No Development Zone' and that no construction shall be permitted within such Zone except for repairs of existing authorised structures not exceeding the existing FSI, existing plinth area and existing density. This clearly suggest that the authorised structure itself should have a FSI, plinth area and subscribe to the norms of density. Mere remnants of stones or concrete piers on

the shore to avoid sand erosion can by no stretch of imagination be considered to have a FSI, plinth area or density. Mr. Dada, learned Senior Counsel appearing for the respondent nos. 7 and 9 thereafter relied upon the observations at para 35 in the judgment of the Division Bench of this Court in the case of Kisan Mehta and others (supra) to contend that even a retaining wall can be treated to be an authorised structure. But however, on going through para 36 of the judgment, the Division Bench held that it was not necessary to consider such question. As such, the contention of Mr. Dada that the Division Bench had held that a retaining wall was an authorised structure in terms of the CRZ Regulations cannot be accepted. In any event, there is no material on record to establish the existence of a retaining wall on the seaward side of the concerned property as on the date of the coming into force of the CRZ Notification of 1991.

28. In such circumstances, the only authorised structure as noted on the basis of the plan produced by the Court Commissioner in the proximity of the subject land and adjoining thereto is the Light House located close to the Youth Hostel. The fact that the Light House is a covered structure with a plinth and FSI has not been disputed by the learned counsel appearing for the respective parties. Taking note of the judgment of this Court and the Madras High Court, referred to herein above, once an authorised structure in the adjacent land is found between the impugned construction and the High Tide of the river, there

is no bar for carrying out any construction activity on the landward side of such existing authorised structure. The fact that the Light House was existing much before the coming into force of the Notification of 1991 cannot be disputed. Taking note of the said judgment of this Court though arrived on the basis of the letter/clarification issued by M.O.E.F., with regard to the construction activity within the coastal area of Mumbai Municipal Council nevertheless, in view of the judgment of the Madras High Court referred to herein above, which came to be passed much before such clarification and approved by the Division Bench of this Court, we find that an imaginary line can be drawn parallel to the High Tide Line of the river from the existing authorised structure and any development towards the landward side of such line would not infringe the provisions of the CRZ Notification of 1991. But however, in case any structures/development is located on the seaward side of such line it would violate the provisions of the CRZ Notification of 1991 as such development would be in the no development zone of CRZ II area.

29. We have already observed herein above, that the burden is on the builder – respondent no.7 herein to disclose fairly all the material which would justify the sanctions in accordance with law. In the present case, we find that the respondent no.7 have been fashioning their stand on different basis. At one stage, they claim that the CRZ Notification of 1991 is not applicable to the subject hotel project as the development started much prior to the coming into force of the CRZ of 1991. We have

already rejected such contention for the reasons herein above. The next contention is based on the stand taken by the State Government that the set back from the river bank should be 10 metres and that the restrictions under CRZ Notification are only at a distance of 500 metres from the Arabian Sea. While examining the said aspect, we have already taken note of the fact that the executive construction of the provisions of the Notification by the State Government are erroneous and contrary to the express and plain reading of the provisions of the CRZ Notification of 1991. Thereafter, the respondent no.7 takes a stand that the remnants in the river are to be considered to be an authorised structure which aspect has also been rejected by us for the reasons stated herein above. This divergent stands of the respondent no.7 would have to be examined in the context that the original application or permission of the construction licence which came to be granted in November, 1991 has not been produced either by the respondent no.7 nor by the concerned authorities. Such divergent stand taken by the respondent no.7 would clearly indicate that the respondent no.7 are trying to play a game of hide and seek and did not come in a straight forward manner accepting the legal position and disclosing the requisite material to ascertain whether the provisions of the CRZ Notification of 1991 have been violated by the respondent no.7. The respondent no.7 has failed to make a full, fair and candid disclosure of all the facts to discharge the burden that they were entitled for such sanction. As such, we cannot be oblivious to the fact of trust of the population of all urban cities to

ensure that the norms of the law as provided in the CRZ Notification of 1991 are strictly followed as directed by the Apex Court in the judgment of ***Indian Council for Enviro-Legal Action V/s Union of India reported in 1996(5) SCC 281.*** Even along with the affidavit filed by the respondent no.7 no such application nor construction licence have been produced. There are only references to such licence in the affidavit. Based on such references and documents produced by the petitioners, we have already found that the permissions were granted on the assumption that the subject land was within CRZ II area. The CRZ Notification has been introduced to put severe restrictions on untrammelled depredation of environment resource. Many of the State did not prepare the coastal zone management plan for considerable length of period and Supreme Court was required to step in and direct the States to submit during this interregnum i.e. prior to the preparation of the coastal zone management plan, the sanctions could be issued strictly in accordance with the restrictions imposed in the CRZ Notification of 1991.

30. The permissions granted to the subject hotel project of the respondent no.7 based on the plan submitted by the respondent no.7 appears to be on the basis of a proposed road from Yatri Niwas to Youth Hostel along river Mandovi. In fact this proposed road which is reflected in the said plan is also seen in the plan and now produced by the respondent no.1 after the hearing. The contention of the authorities that

the road was approved after GSCE granted NOC for hotel cannot be accepted. As the road was not even proposed or existing before the hotel project was approved, such depiction of the road on the plan submitted by the respondent no.7 become questionable. Apart from that, the CRZ Notification stipulates that the construction can be permitted only on the landward side of the existing road or a road proposed in the coastal zone management plan. Admittedly, the alleged proposed road depicted in the plan does not satisfy both the said requirements and as such the stand of the authorities that the subject hotel project was on the landward side of the proposed road is totally without any substance. As already pointed out herein above, CZMP was not approved by the Central Government at that stage and as such the restrictions as imposed under the CRZ Notification of 1991 had to be complied with and the respondent could not arbitrarily grant a sanction to the respondent no.7 to put up the structures which were contravening to the provisions of the CRZ Notification of 1991.

31. Apart from that, we have also on the basis of the Commissioner Report found that the only structure which can be considered to be an authorised structure between the hotel project of the respondent no.7 and the High Tide Line of the river in the adjoining land is the Light House. Based on these findings, the authorities will have to examine whether any development/construction activity at the site from the line referred to above would violate the norms of CRZ II

area in the CRZ Notification of 1991. We have to keep in mind that the provisions of the CRZ Notification have been conceived to maintain high public purpose to subserve in protecting the ecology and conserving the environment. The Division Bench of this Court in the case of ***Overseas Chinese Cuisine (India) Pvt. Ltd., & another V/s The Municipal Corporation of Greater Bombay & others, reported in 2000(1) Bom. C. R. 341*** held that the CRZ Notification embodied the principle of " containment" and "toleration" and that the building activity permitted under the Notification in CRZ II area shall be frozen to the laws and norms existing on the date of the Notification. In such circumstances, the only authorised structure which was in existence as on the date of the Notification can be the Light House as depicted in the plan attached to the Court Commissioner's report.

32. No consideration should be shown to the builder or any other person when the construction is illegal and unauthorised. This dicta is now almost a rule of law. The stress was laid by the respondent no.7 to exercise jurisdiction by moulding the relief and avoid any demolition of the hotel project of the respondent no.7. Such discretion cannot be exercised which would encourage illegality or perpetual illegal unauthorised construction. The Judicial discretion cannot be guided contrary to law. The Judicial discretion whenever exercised has to be in accordance with law and settled legal principle. In the present case, the respondent no.7 proceeded with the hotel project as the interim relief

was refused by this Court. It may be correct that the respondent no.7 has invested a considerable amount on the construction which by every standard appears to be to a starred construction. The respondent no.7 has taken such a risk though the interim order was made specific that such order would not come in the way of deciding the petition on its own merits. This itself shows that the construction activities carried out by the respondent no.7 was at its own risk. The primary concerned of the Court is to eliminate the negative impact. The construction activity which comes within the CRZ area has to be eliminated as otherwise it would affect the environmental conditions in ecologically vulnerable areas and deprive the citizen of Panjim from moving into the picturesque Miramar beach situated adjoining the subject hotel project. In case any construction has been put up by the respondent no.7 towards the river side of a line to be drawn from the Light House parallel to the High Tide Line, such construction is contrary to the restrictions imposed in the CRZ Notification which this Court cannot condescend as there should be no judicial tolerance to illegal and unauthorised construction. As such, the authorities would have to comply with the directions herein to ensure that if any construction activity is located towards the river side, of such imaginary line to be drawn, such construction activity being illegal cannot be allowed to continue and action would have to be taken to restore the said area to its original condition.

33. The Apex Court in the judgment reported in ***AIR 2013 SC***

page 927 in the case of ***Dipak Kumar Mukherjee Vs Kolkata Municipal Corporation and others*** has held at paras 8 and 9 thus :-

> "**8**. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structure not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storied structure raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy

nexus with the power corridors.

9. We have prefaced disposal of this appeal by taking cognizance of the precedents in which this Court held that there should be no judicial tolerance of illegal and unauthorized constructions by those who treat the law to be their sub-servient, but are happy to note that the functionaries and officers of Kolkata Municipal Corporation (for short, 'the Corporation') have been extremely vigilant and taken steps for enforcing the provisions of the Kolkata Municipal Corporation Act, 1980 (for short, 'the 1980 Act') and the rules framed thereunder for demolition of illegal construction raised by respondent No.7. This has given a ray of hope to the residents of Kolkata that there will be zero tolerance against illegal and unauthorised constructions and those indulging in such activities will not be spared."

34. Considering the view taken by us, we prima facie find that there is development/ construction activity carried out by the respondent no.7 which may include the swimming pool and the compound wall towards the seaward side of the imaginary line to be drawn from the Light House referred to in the said plan. It is pertinent to note that at para 6 of the affidavit of Mr. E. R. Godinho who was a

Member Secretary of the North Goa Planning and Development Authorities he has stated that on 16.06.1997 the respondent no.7 sought development permission for construction of a retaining wall/compound wall around the said property. As such wall was coming along the bank of Mandovi river the matter was referred to the Goa State Committee of Coastal Environment – respondent no.3 herein. Pursuant thereto such wall came to be constructed. The permission granted in the year 1997 is after the Coastal Management Plan was already approved by the Central Government and the compound wall was allowed to be constructed in CRZ II area. In such circumstances, allowing the construction of such wall without examining whether it comes on the seaward side of an existing authorised structure as existing in 1991 would totally violate the restrictions and norms of the CRZ Notification of 1991.

35. Another aspect to be noted is that as per the affidavit of the Chief Town Planner, the distance from the Bank to the hotel building is shown to be 23 metres. Even in the inspection report submitted by the Court Commissioner, the distance is more or less the same. But, however, as per the plans which were revised in the year 1997, there are structures including swimming pool, retaining walls, etc, which are prima facie situated within the said distance of 23 metres. The permissions to that effect appear to have been granted in the year 1997 based on the plans produced by Shri H.D. Naik, learned Counsel

appearing for the respondent No.1. Such permissions, prima facie, did not meet the restrictions imposed by the CRZ Notification of 1991. In such circumstances, we find that the concerned Authorities including the respondent No.3, now the Goa Coastal Zone Management Authority would have to re-examine the constructions put up by the respondent No.7 in the area towards the river side of an imaginary line to be drawn from the Light House, parallel to the High Tide Line, along the river, across the subject land where the hotel project of the respondent No.7 is located. We have no sufficient material on record to clearly identify the High Tide Line at loco to conclusively ascertain whether any building/structure put up by the respondent no.7 is located towards the river side of such line to be drawn from the Light House parallel to the High Tide Line. If any construction activity is carried out on the river side it would have to be dealt with by the respondent Nos.1 to 4, after hearing the respondent No.7 in accordance with law, as necessary action would have to be taken in case any such structure violates the CRZ Notification of 1991. As such, we find that the concerned authorities namely the respondent nos. 1 to 4 or now GCZMA would have to re-examine whether the swimming pool, the compound wall or any other development/construction activity carried out by the respondent no.7 is located towards the seaward side of such line drawn parallel to the High Tide Line from the Light House as pointed out herein above and take necessary action accordingly in accordance with law. To that extent, the said sanction dated 29.11.1991 and the subject

revisions stand vitiated.

36. Mrs. N. Alvares, learned counsel appearing for the petitioners has also brought to our notice the fact that the respondent no.7 has kept a path to access the beach between the Youth Hostel and the subject hotel project for the benefit of the public. Such access cannot be obstructed and has to remain open to make the beach accessible to the public at large. It was also pointed out that there are some difficulties to access the beach from such path. The respondent no.2 shall as such take necessary measures to make such path accessible to the public in accordance with law.

37. In view of the above, we pass the following :

O R D E R

(i) The respondent nos. 1 to 4 or any other designated competent authority shall proceed to examine whether any of the construction activities carried out by the respondent no.7 comes towards the river side of the imaginary line to be drawn from the Light House shown in the plan of the Court Commissioner parallel to the High Tide Line in the manner as stated herein above and thereafter proceed to take necessary action against the respondent no.7 for restoring such area in

accordance with law within six months from today.

(ii) The respondent no.2 shall take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of the respondent nos.7 and 9.

(iii) The respondent nos.7 and 9 shall not obstruct the access of the public to the subject beach through the said reserved path and the respondent no.2 shall take all measures to make such path accessible to the said beach in accordance with law.

(iv) Rule is made absolute in the above terms.

(v) The petition stands disposed of accordingly with costs.

K. L. WADANE, J **F. M. REIS, J**

at*

JUDGMENT CONTINUED

Dated : 29th June, 2015

At this stage, Shri J. Supekar, learned Counsel appearing for the Respondent nos. 7 and 9, seeks stay of the Judgment passed today for a period of eight weeks.

2. Mrs. Alvares, learned Counsel appearing for the Petitioners, objects.

3. But, however, in the facts and circumstances of the case, the operation of the Judgment passed today is stayed for a period of eight weeks from today.

K. L. WADANE, J **F. M. REIS, J**

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IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 898 OF 2015
IN
STAMP NUMBER (APPLICATION) NO. 2544 OF 2015

V. M. Salgaocar & Brother
Private Limited (Palm Hotels)
(India) Ltd.,
Vasco da Gama, Goa. … Applicant/Petitioner
(Original Respondent no. 7)

V e r s u s

1. The Goa Foundation & 8 Others … Respondents

Mr. T. N. Subramaniam, Senior Advocate with Mr. Firdosh Pooniwala, Mr. Rishith Badiyani and Mr. J. Supekar, Advocates for the Applicants.

Ms, Norma Alvares, Advocate for the Respondent nos. 1 and 2.

Mr. P. Dangui, Addl. Government Advocate for the Respondent nos. 4, 5, 6 and 8.

Mr. H. D. Naik, Advocate for the Respondent no. 3.

Coram :- **F. M. REIS,**
NUTAN D. SARDESSAI, JJ.

Date: 30th June, 2016

ORDER *(Per F. M. Reis, J.)*

Heard Mr. Subramaniam, learned Senior Advocate appearing for the Applicants, Ms. Norma Alvares, learned Counsel appearing for the Respondent nos.1 and 2, Mr. Naik, learned Counsel appearing for the Respondent no.3 and Mr. P. Dangui, learned Addl. Government Advocate

appearing for the Respondent nos. 4, 5, 6 and 8.

2. This is an application filed by the Original Respondent no. 7 for review of the Judgment passed by this Court dated 29.06.2015 along with an application for condonation of delay.

3. As pointed out to the learned Counsel and by consent, it was agreed to examine the merits of the Review Petition alongwith the application for condonation of delay.

4. Mr. Subramanian, learned Senior Advocate appearing for the Applicants, has pointed out that the Applicants are seeking review of the Judgment essentially on two counts one that they have now obtained a copy of the scanned plan from the Panjim Municipality which clearly shows the existence of the swimming pool which would have an important bearing in the matter in controversy. Learned Counsel has further pointed out that there was material on record to show that the project of the Petitioners is behind the Government retaining wall which is an authorised structure. It is further pointed out that the swimming pool is permitted within the prohibited area of CRZ-III and, as such by same logic, the swimming pool should be permitted in the petitioners' property which is in CRZ-II area. It is also pointed out that this Court has examined the matter on an assumption that the restrictions in terms of CRZ-III would be applicable when the subject property is located in

CRZ-II.

5. On the other hand, Ms. Norma Alvares, learned Counsel appearing for the Respondent nos. 1 and 2/the Original Petitioner, has opposed the above Review Petition. It is pointed out that a review cannot be an Appeal in disguise. It is further submitted that this Court has taken a categorical view that the alleged retaining wall is not an authorised structure as it was only a concrete slab. It is further pointed out that the Petitioners themselves accept that the subject land is in CRZ-II and, as such, the benefits reserved for CRZ-III in terms of the Notification of 1991 cannot be extended to the subject property. It is further pointed out that this Court has also noted that the application for permission was obtained only after the coming into force of the CRZ 1991 Notification and, consequently, the contention of the Petitioner-the Original Respondent no. 7 that the work had started before the coming into force the said Notification is totally misplaced. It is accordingly pointed out that the petition be rejected.

6. We have considered the submissions of the learned Counsel and we have also gone through the records. It is now well settled that a Review cannot be an Appeal in disguise. Whilst examining whether the CRZ Notification of 1991 which came into force on 19.02.1991 was applicable to the subject project of the Petitioner, we have considered at Para 12 and 13 of the Judgment that the project of the Original Respondent no. 7 was

considered at the meeting held on 14.06.1991 i.e. after the coming into force of the said CRZ Notification. It is also noted that the records do not reveal any application for any permission from the statutory authorities have been issued in favour of the Original Respondent no. 7 the coming into force of the said Notification of 1991. In such circumstances, the contention of the learned Senior Advocate appearing for the Applicant-original Respondent no. 7, that the Judgment requires review on that count cannot be accepted. Even in the affidavit filed on behalf of Respondent no. 7, it has been clearly mentioned that the planning permission is dated 29.11.1991 and the clearance by the GSCE is dated 14.06.1991.

7. With regard to the next contention of the learned Senior Advocate, we find that Para 24 of the said Judgment, the matter has been examined on the basis that the subject land is located in CRZ-II. The provisions with regard to CRZ-III were examined in the said Judgment at Para 27 in the context of the contention of the petitioner that the remnants of stones in the river be considered as an authorised structure. The contention that the retaining wall was an authorised structure has also not been accepted. Considering that an authorised structure itself has to have a FSI, plinth area and subscribe to the norms of the density. The fact that CZMP was not approved by the Central Government when the permissions were granted, has also been examined at Para 30 of the said Judgment and, as such, the contention of the learned Counsel appearing for the Applicant that

this aspect has not been considered, cannot be accepted.

8. At Para 34 of the said Judgment, we have, prima facie, taken a view after holding that the light house referred to in the plan prepared by the Commissioner was an authorised structure that the swimming pool and the retaining wall would come on the seaward side of an imaginary line to be drawn as stated therein.

9. In such circumstances, the disclosure of the Swimming pool even in the plan which came to be approved after the coming into force of the CRZ Notification 1991 would have no bearing to the view taken by us whilst disposing of the said Writ Petition filed by the Respondent no. 1 herein/the Original Petitioner. As such, we find that though there are no justifiable grounds stated in the application as to why the said plan was not produced earlier when the Petition and the affidavits in reply were filed on behalf of Respondent no. 7 nevertheless, we find that such plan would not in any way have any bearing to the view taken whilst passing the Judgment. The contentions raised by the learned Senior Advocate appearing for the Applicant are essentially challenging the findings arrived at by this Court whilst passing the said Judgment dated 29.06.2015 which cannot be a ground for review in terms of law. The Court whilst examining a Review Petition has limited jurisdiction circumscribed by definite limits fixed by the language used under Order 47 Rule 1 of the Civil Procedure Code. It can

allow a review on specified grounds as mentioned therein. The application for review on the ground of discovery of new material should be considered with great caution and should not be granted very lightly. In exercise of review jurisdiction, the Court cannot re-hear the matter on merits afresh.

10. In this connection, the Apex Court whilst dealing with a Review Petition filed based on additional documents and photographs reported in ***(2013) 15 SCC 534*** in the case of ***N. Anantha Reddy vs. Anushu Kathuria,*** has observed at Para 6 thus :

> "6. A careful look at the impugned order would show that the High Court had a fresh look at the question whether the appellant could be impleaded in the suit filed by Respondent 1 and, in the light of the view which it took, it recalled its earlier Order dated 8.06.2011. The course followed by the High Court is clearly flawed. The High Court exceeded its review jurisdiction by reconsidering the merits of the order dated 08.06.2011. The review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for review. The mistake apparent on record means that the mistake is self evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits."

11. Taking note of the said observations and for the reasons stated herein above, we find that there is no error apparent on the face of record which would call for review of the said Judgment.

12. Hence, we find no merit in the above Petition and, as such, both the applications stand rejected.

NUTAN D. SARDESSAI, J. **F. M. REIS, J.**

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IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 274 OF 2016
IN
WRIT PETITION NO. 333 OF 1993

THE GOA FOUNDATION THR. ITS SECRETARY, DR CLAUDE ALVARES. ... Applicant

Versus

THE NORTH GOA PLANNING AND DEVELOPMENT AUTHORITY THR. ITS MEMBER SECRETARY AND 8 ORS., ... Respondents

Ms. Norma Alvares, Advocate for the applicant.
Mr. S. D. Lotlikar, Advocate General, with Mr. D. Lawande, Additional Advocate General with Ms. P. Bhandari, Additional Govt. Advocate for the respondents No.1 to 4.
Mr. Rafiq Dada, Senior Advocate with Mr. J. P. Supekar, Advocate for the respondent No.7 & 9.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 24th October, 2016

P.C.:

Additional affidavits filed on behalf of the respondents no.1 and No.7.

2. Heard Ms. Norma Alvares, learned Counsel appearing for the applicant, Mr. S. D. Lotlikar, learned Advocate General appearing for the respondents No.1 to 4 and Mr. Rafiq Dada, learned Senior Advocate appearing for the respondent No.7.

3. Writ Petition No.333 of 1993 was disposed of by this Court

vide Judgment dated 29th June, 2015, inter alia, issuing the following directions :

(i) The respondent nos. 1 to 4 or any other designated competent authority shall proceed to examine whether any of the construction activities carried out by the respondent no.7 comes towards the river side of the imaginary line to be drawn from the Light House shown in the plan of the Court Commissioner parallel to the High Tide Line in the manner as stated herein above and thereafter proceed to take necessary action against the respondent no.7 for restoring such area in accordance with law within six months from today.

(ii) The respondent no.2 shall take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of the respondent nos.7 and 9.

(iii) The respondent nos.7 and 9 shall not obstruct the access of the public to the subject beach through the said reserved path and the respondent no.2 shall take all measures to make such path accessible to the said beach in accordance with law.

4. An application was filed by the petitioner, inter alia, raising a grievance that despite of such directions, no effective measures were taken by the concerned respondents in complying with the directions issued while disposing of the said petition. Thereafter, the respondent No.3 filed a report contending that the directions in the said Judgment have been duly complied with. But, however, the

learned Counsel appearing for the petitioner has disputed such report and pointed out that the directions have not been complied with in terms thereof.

5. Mr. Lotlikar, learned Advocate General appearing for the respondents No. 1 to 4 submitted that this Court while passing the said Judgment did not have enough material to locate the High Tide Line (HTL) of the river and the directions were issued to the concerned Authorities to identify the HTL and draw the imaginary line parallel to such HTL from the authorised structure which was stated to be the Light House and therefore take necessary action in accordance with law with regard to any construction actives located towards the river side of such imaginary line. It is further pointed out that experts were appointed to examine and identify the HTL of the river and as such, according to him, it was found that there was no structure on the river side of such imaginary line drawn by such experts. The learned Advocate General has also taken us through different portions of the Judgment to point out that the decision to examine whether any constructions are contrary to the CRZ Regulations was left to be taken by such Authority.

6. Mr. Rafiq Dada, learned Senior Advocate appearing for the respondent No.7 & 9 has submitted that the HTL has to be constituted as in existence as on the date of the coming into force of the CRZ Notification in February, 1991. The learned Senior Counsel

submits that according to the land records, there was some erosion of land which has been duly examined by the experts while preparing such report.

7. Ms. Norma Alvares, learned Counsel appearing for the petitioner, however, points out that the HTL would have to be examined in terms of the Environment Protection Act by the Authorities constituted thereunder to carry such an exercise. It is further pointed out that the directions issued by the Chief Secretary-respondent No.2 to comply with the directions as contained in the said Judgment in a particular manner have not been followed by the Committee which had submitted the report. The learned Counsel has, thereafter, taken us through the report to point out that the report is totally contrary to the directions issued by this Court whilst disposing of the writ petition.

8. Upon hearing the learned Counsel appearing for the respective parties, we find that this Court had in fact indicated the manner in which the exercise has to be carried out in paras 28, 34 and 35 of the said Judgment. This Court had also observed that such an exercise would have to be carried out by the GCZMA which was the Authority constituted under the Environment Protect Act to examine environmental issues. In such circumstances, we find that constituting a Seven Member Committed, keeping aside the GCZMA by the concerned respondents is not at all justified. As rightly

pointed out by the learned Counsel appearing for the petitioner, the HTL would have to be identified in terms of the directions issued by this Court in the said Judgment.

9. In such circumstances, we are not inclined to accept the report filed by the respondents which is stated to be in compliance with the directions issued by this Court in the said Judgment as the directions issued are not in conformity of our Judgment. As such, we direct the GCZMA duly constituted under the Environment Protect Act, to comply with the directions issued by this Court in the said Judgment dated 29/06/2016 in Writ Petition No.333/1993. Needless to say, the HTL would have to be identified in accordance with the Environment Protect Act, 1986 and the CRZ Notification of 1991, within three months. It is made clear that we have not conclusively examined the correctness of the report though, on bare perusal of the said report, the exercise has been carried out on the basis of the High Water Line, which was not the direction issued in the said Judgment.

The application stands disposed of accordingly.

NUTAN D. SARDESSAI, J. F. M. REIS, J.

ssm.

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ANNEXURE P-4

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO.26 OF 2017

The Goa Foundation,
through its Secretary,
Dr. Claude Alvares, G-8,
St. Britto's Apartments, Feira Alta,
Mapusa, Goa 503 507. ..... Petitioner.

Versus.

1. Goa Coastal Zone Management Authority, 1st Floor, B-Wing, Pandit Deendayal Upadhyay Bhavan Pundalik Nagar, Alto, Porvorim, Goa 403 521.

2. State of Goa
Through its Chief Secretary,
Secretariat, Porvorim, Goa.

3. (Goa Marriott Resort,
3rd Floor, Karina Chambers,
St. Inez, Panaji, Goa 403 001) stands deleted, vide order dated 11/9/17 and substituted by :

V.M. Salgaocar & Brothers Pvt. Ltd.,
Salgaocar House,
Dr. Francisco Luis Gomes Road,
Vasco da Gama, Goa 403 802. ..... Respondents.

Ms. Norma Alvares, Advocate for the Petitioner.

Mr. D. Lawande, Advocate General with Mr. Pradosh Dangui, Government Advocate for Respondent Nos.1 & 2.

Mr. Rafiq Dada, Senior Advocate with Mr. Raju Subramaniam, Senior Advocate, Mr. Devidas J. Pangam, Mr. Firdosh Puniwalla, and Mr. J. Supekar, and Mr. Rishit Badani, Advocates for respondent No.3.

Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.

Reserved on : 6 June 2018.

Pronounced on : 24 August 2018.

JUDGMENT : (Per N.M. Jamdar, J.)

Rule. Rule made returnable forthwith. Respondents waive service. Taken up for final disposal.

2. This Petition concerns a hotel in Goa called the Goa Marriott Resort. The Hotel is located near the Gaspar Dias Beach at Panaji, where the river Mandovi meets the Arabian Sea.

3. In the year 1993, The Goa Foundation filed a Writ Petition No. 333 of 1993 making a grievance that the Hotel breached the Coastal Regulation Zone restrictions. The Division

Bench disposed of the Petition on 29 June 2015. The Court directed the authorities to draw a line parallel to the High Tide Line from the Light House, a structure nearby. The authorities were to determine whether any construction of the Hotel falls towards the river side of this line. After that to take necessary action against the Hotel. The Hotel was directed take all measures to prevent the erosion of the sand bank and the siltation of the river. The Hotel was directed to remove the obstructions to the access of the public to the beach.

4. The Goa foundation has filed the Petition with a grievance that the Authorities are circumventing the directions of this Court.

5. The Hotel construction is on the coast. It is necessary to advert to the concept of the Coastal Zones. India has a rich coastal and marine ecosystems. The already fragile ecology of the coastal regions of seas, bays, estuaries, creeks, rivers, and backwaters if not protected, is vulnerable to abuse. The degradation of the coastal zone affects the livelihood of the millions. This, in turn, has an impact on the economic growth. Thus the Coastal ecosystems have economic as well as a social value. A large number of people living by the coast depend on the natural resources for their livelihood. Poor planning and a lackadaisical approach can threaten the coastal ecosystems. The

coastal areas had not received adequate protection inspite of their ecological diversity and the contribution to the national economy. Acknowledging this position, the Central Government issued a Notification on 19 February 1991 under the Environment Protection Act 1986 in respect the Coastal Regulation Zone. The CRZ Notification regulates and restricts the activities in the Coastal Regulation Zones. These regulations protect the ecological balance in the coastal area. The CRZ Notification has provided a categorisation of the coastal stretches into CRZ I, II, III and IV and has varying degrees of restrictions.

6. The Supreme Court has recognized and has emphasized the need to protect the coastal zones, through various decisions, such as *Indian Council for Enviro-legal Action vs Union of India* [1], *S. Jagannath vs Union of India* [2], and V*aamika Island vs Union of India and Ors.* [3]. Some of the principles laid down are that the State has a legal obligation to protect the coastal environment. Any development within the Zones must be as per the Notification. Those who seek to construct in such an areas have to demonstrate that the construction will not harm the environment. Such an entity must produce all the relevant material. A failure to disclose the appropriate content and

1 1996 (5) SCC 281
2 1997 (2) SCC 87
3 2013 (2) SCC 760

information will invalidate the grant of sanction.

7. With these objects of the CRZ notification, we now turn to the case at hand.

8. An outline of the events that have occurred before the institution of the W.P. No.333 of 1993 and of its disposal, is necessary. It is as follows.

9. On 7 March 1977, the Government of Goa invited offers for construction of a hotel at Gaspar Dias Beach. The project proponent submitted its proposal on 28 March 1977. The Government of Goa and the project proponent executed a lease on 30 April 1979. The Government of Goa leased an area of 15,666 sq. metres to the lessee at an annual rent of ₹ 43,277.30. (The Lessee Hotel Management is hereafter is referred to as the Hotel). The State Government also acquired more plots for construction of the Hotel.

10. The then Lieutenant Governor of Goa objected to the construction of the Hotel. He pointed out that the development was too close to the Mandovi River. He stated that the Hotel would take away the land required for public recreation. The Captain of Ports wrote to the Chief Town Planner that the construction would be

beyond the highest high tide mark. He apprehended a hindrance to the navigation. The Captain of Ports suggested an undertaking be taken from the Hotel to make the necessary changes.

11. The Government of Goa and the Hotel entered into an agreement for construction of a luxury Hotel. The agreement required the Hotel to follow all the laws, including the ones for the preservation of the ecology and the environment .

12. Sometime around February 1987, the Panjim Draft Outline Development Plan was notified for objections. In this plan, the user in the construction area was shown as Recreational. The Hotel objected and sought that it should be changed to Commercial. The Ecological Development Council of Government of Goa, on 4 March 1987, approved the Hotel project in principle. The approval was subject to change of zone under the Draft Outline Development Plan. The Town and Country Planning Board finalised the Development Plan on 11 January 1990. The Government of Goa constituted the Goa State Committee on Environment. This Committee (GSCE) replaced the earlier Council. GSCE took a review of the decisions of the previous Council.

13. The Ministry of Environment and Forest (MoEF) on 19

February 1991 issued a Notification under the Environment Protection Act 1985. A Coastal Regulation Zone (CRZ) was demarcated for the sea coast and the tidal rivers.

14. The GSCE in principle approved the proposal of the Hotel on 14 June 1991. The Town and Country Planning Board approved a 10 metres wide road along the River Mandovi nearby to the project site. MoEF objected to the decision of the GSCE to approve the Hotel project. MoEF requested that the case is deferred. MoEF sought the details of the project in the interest of environmental management. GSCE rejected the request of MoEF. GSCE stated that the approval is conveyed to the party. It also noted that the site falls within the Coastal Regulation Zone- II (CRZ-II). Panjim Planning Development Authority granted development permission to the Hotel on 19 November 1999. The permissions specified the area as Chalta Nos.14(p), 16(p), 17, 18, 1(p) of P.T. Sheet Nos. 98 and 116 of Miramar. On 20 December 1991, the Panjim Municipal Council issued a construction licence. The Tree Officer, on 29 June 1992, granted permissions for the felling of trees on the plots. Construction Sanad was issued on 24 July 1992.

15. The Hotel started construction sometime in September

1992. There were large-scale protests by the residents of Miramar. The Goa Foundation, the Petitioner, filed a Writ Petition No.333/1993 in public interest in this Court.

16. The Petitioner alleged that the Hotel construction violated the CRZ Notification. It contended that the development was proceeding on the basis of the unlawful permissions. The Petitioner protested that the public access to the Beach was impeded. The Petitioner drew attention to the objections raised by the Lieutenant Governor on 30 January 1984. The LG had pointed out that there was going to be a public outcry if the Hotel was allowed to come up close to water ,destroying a thick grove and blocking public access . The Petitioner also placed on record the protests made by the residents. The Petitioner complained that there was no application of mind while granting permission to cut a large number of trees. It was stated that the construction faced direct tidal effect. The Petitioner prayed for setting aside the sanctions, to restrain any further development, to demolish the construction, restore the area and open up the access to the Beach for the general public.

17. Rule was issued in the Writ Petition on 30 August 1993. Civil Application No.180/1993 for interim relief came up for consideration of the Division Bench . The Division Bench, by order

dated 16 September 1993, rejected the interim relief. The Petitioner filed a Special Leave Petition in the Supreme Court. The Supreme Court dismissed the Petition. The Supreme Court however clarified that any observations made by the Division Bench or by the Supreme Court would not affect the merits of the rival contentions at the time of final hearing , and would not prejudice the stand of the Petitioner.

18. While the Petition was pending, further developments took place. The CRZ notification was amended on 10 August 1994. The CRZ along with the tidal rivers was fixed at 50 metres from the High Tide Line. The Captain of Ports received complaints from the residents of Miramar about the sand excavation by the Hotel. The Captain of Ports inspected the Hotel site. According to the petitioner, the Captain of Ports noticed that the sand dumps blocked the public access to the beach. The MoEF constituted a Committee to examine the complaints of CRZ violations in Goa. The Committee submitted an Interim Site Report to the MoEF on 30 October 1994. According to Petitioner, the report established that the Hotel was abutting the waterfront, it was affected by the tidal action, and there was no adequate area between the sea and the construction. The Petitioner filed an application for the stay of the construction. The Court, in view of the stand of the Government of Goa that the High Tide Line

is 1.5 km. from the site, dismissed the application. The Goa Planning and Development Authority (GPDA) on 27 March 1995 renewed the permissions of the Hotel. The Goa Coastal Zone Management Plan was approved on 27 September 1996. The Hotel site was classified in CRZ-II. Further revision of plans was approved on 1 October 1996. The GPDA imposed a condition that no construction on the west side of the existing building line towards Mandovi River would be made. The application made by Hotel to build a retaining wall along the river bank was sent to the Goa State Committee for Coastal Environment.

19. On 25 July 1997, the Division Bench directed that a location map be drawn. It was directed that the location map should show the disputed project *vis a vis* the existing structure on the bank of River Mandovi such as Yatri Niwas, Youth Hostel, Indoor Stadium, and Kala Academy to examine whether the Hotel site comes towards the seaward side or the landward side. A Surveyor was appointed as a Commissioner. The Commissioner submitted his report on 12 December 1997.

20. The hearing of the Petition was deferred because of the pendency of a challenge in the Apex Court concerning the Coastal Regulation Zone. The Apex Court delivered a Judgment in that case

on 22 September 2014.

21. Writ Petition No.333/1993 was thereafter taken up for hearing. Parties filed their replies and produced documents. The Petitioner, in short, argued as follows: The construction violates the CRZ Notification. The authorities have committed a fraud in the interpretation of the relevant provisions. The authorities have acted with malice in law to grant permissions to the Hotel within the CRZ. There is a collusion between the authorities and the Hotel. Misleading facts are placed on record by filing documents and affidavits. The authorities have falsely claimed that the Hotel is within a distance of 1.5 km. from the High Tide Line. The Hotel has obstructed the access to the Miramar beach. Removal of the sand dunes has degraded the ecologically fragile area. While disposing of the application for interim relief, the Court was misled about the specific CRZ restrictions. The Commissioner's report shows that the swimming pool is hardly 20 metres from HTL. Even the Hotel is at a distance of 30 metres from the River. Though the plans have been approved on the basis that the area is coming under CRZ-II, the proposed road is not sanctioned. There is no approved road towards the seaward side of the Hotel. There is no authorised structure towards the seaward side of the Hotel. Thus the permissions granted

in favour of the Hotel have violated the CRZ notification, the same may be revoked and the Hotel be directed to remove the construction and the obstruction.

22. The Hotel opposed the Petition. Its arguments were as follows: The project was conceived on 30 April 1979 and sanctioned before the Notification of 1991. The Authorities had interpreted that the restriction would not apply to any project beyond 500 metres from the High Tide Line. The Authorities had always taken a stand that the project is not affected by the CRZ Notification. The State Government is the appropriate authority in the matter of granting development permissions. The interpretation of the Authorities which implement the notification needs higher weightage. The State Government was the appropriate authority to issue permissions during the preparation of the Coastal Zone Management Plan to implement the CRZ Notification of 1991. The permission to the Hotel was issued before the amendment in the year 1994. The Petitioner's interpretation was not accepted by the Court while passing the interim order. The Petitioner has not joined the relevant parties and has not challenged the decision in the meeting of 20 November 1991. The conduct of the Petitioner is not bona fide. There are no particulars of the alleged fraud. The interim report of

the MoEF cannot be relied upon. There is an authorised structure between the Hotel and the Mandovi River. The re-validation of plans is correct and proper. All permissions have been properly granted. The Hotel has incurred a significant expenditure.

23. The State Authorities also opposed the Petition. The State, however, did not dispute that the permissions were granted to the Hotel based on the norms of CRZ-II in the CRZ Notification of 1991. The GPDA supported the stand of the State.

24. The Division Bench held that the Petition was not barred by principles of res judicata. The Division Bench also rejected the argument of the Hotel of laches on the part of the Petitioner. The Bench dealt with the applicability of the CRZ Notification of 1991 in extentio. The Division Bench rejected the contention of the Hotel that the permissions were obtained before the CRZ Notification of 1991. The Division Bench took a review of various permissions granted by the Authorities. The Court held that the record showed that the Hotel applied for permissions only after the Notification of 1991. The contention of the Hotel that it did not fall within the ambit of Notification of 1991 was rejected. The Court also did not approve the decision of the Goa State Committee for Environment to maintain the distance of 10 metres from the river bank. It held that it

violated the provisions of the CRZ Notification of 1991. The Division Bench rejected the argument of expenditure holding that the Hotel has taken a calculated risk.

25. In the reply affidavit, the Hotel had averred that the permission dated 29 November 1991 and the clearance by the Goa State Committee for Environment dated 14 June 1991 are based on their interpretation. Their interpretation must be given deference. There is no relaxation in favour of the Hotel. It was averred that the CRZ notifications are not applicable to the projects which are located along the river bank, though subject to tidal effect. In any event, it did not affect the projects which are located within 500 meters from the Arabian Sea. The Division Bench rejected these contentions holding that it was misreading the Notification of 1991. The Bench held that the CRZ Notification of 1991 and the note therein it provides that the restrictions concerning the CRZ Notification of 1991 would also apply to the project in respect of the High Tide Line of the river, subject to the conditions stipulated therein.

26. The Division Bench dealt with the submission that exposition of law by the authorities needs to be given a high degree of weightage. The Court held that an interpretation is not binding if it is erroneous. The Division Bench held that on its plain reading, the

interpretation was not in accordance with the provisions of the Notification and, therefore the question of giving any weightage to such interpretation would not arise. The Bench held that in spite of the provisions of the CRZ Notification of 1991, the Respondent No.3 chose to direct changes in the No Development Zone. The Notification itself provided that until the Coastal Management Plan is approved , the CRZ Notification of 1991 has to be complied with. The MoEF had informed the Respondent No.3 that the Hotel would violate the CRZ Notification of 1991. The Bench observed that the Authorities could not have permitted the Hotel without complying with the CRZ Regulations, as it was within 100 metres from the High Tide Line of the River.

27. The Division Bench held that the observations made by it at the interim stage would not bind the Petitioner at the time of final hearing and all issues were kept open. The Division Bench also noted the Government's stand that the permissions were on the basis that the Hotel is within CRZ-II area.

28. The Bench took note of the decision in the case of *People's Movement for Civic Action through its General Secretary and anr. vs. Goa Coastal Zone Management Authority and ors.*, reported in 2014 (3) Bom CR 12 in respect of another permission

issued by the very same Authority in the year 1992. In the case of a project abutting Zuari river, subject to tidal effect, it was held that a set back of 100 metres of HTL of the river was necessary. The Division Bench observed : "*Thus the stand of the respondent nos. 1 to 4 with regard to the CRZ Notification subverts the norm as provided in the CRZ Notification of 1991*."

29. The Division Bench then dealt with the contentions of the Petitioner in respect of mala fides and malice. It noted that the specific allegations were not disclosed, nor the officers were made parties. The Division Bench, however, held that it would not make a difference as case Malice in Law was established.

30. The Bench then examined the report of the Chartered Surveyor-the Commissioner appointed by the Court. It observed that the Hotel was shown to be at a distance of about 22.30 metres and 20.50 metres from the river bank. The plan disclosed an authorised structure, a Youth Hostel at a distance of 37.8 metres from the river bank. It observed that a Light House was located at a distance of approximately 18.00 to 20.00 metres from the river bank. The swimming pool was shown very close to the river bank.

31. The Division Bench referred to a decision in the case of

Kisan Mehta and ors. vs. State of Maharashtra and ors., 2000 (4) Mh LJ 708, and emphasized on certain sentences from the paragraph it reproduced. The Division Bench, based on the decision in the case of *Kisan Mehta*, observed that the contention that the retaining wall was an authorised structure in terms of the CRZ Regulations could not be accepted. There was no material to show that a retaining wall existed on the seaward side when the CRZ Notification of 1991 was brought into force. The Court held that an imaginary line could be drawn parallel to the High Tide Line of the river from the existing authorised structure. Any development towards the landward side of such line would not infringe the provisions of the CRZ Notification of 1991. However, any construction on the seaward side of would violate the CRZ Notification of 1991.

32. The Division Bench took a serious note of the different stands taken by the Respondents. The Division Bench concluded that the alleged proposed road depicted in the plan did not satisfy the requirement. The stand of the Authorities that the Hotel was on the landward side of the proposed road was without substance. It observed that from the Commissioner's report, at the most only structure that could be considered to be authorised, is the Light House. The Division Bench observed that based on these findings the

Authorities would have to examine whether the construction from the line would violate the norms of CRZ-II. It held that no consideration should be shown to any person when construction is illegal and unauthorised. There cannot be a judicial tolerance of such illegalities.

33. Thereafter, the Division Bench concluded the discussion, made certain relevant observations and passed the operative order. It is necessary to reproduce paragraphs 34 to 37, which read thus :

> *"34. Considering the view taken by us, we prima facie find that there is development/ construction activity carried out by the respondent no.7 which may include the swimming pool and the compound wall towards the seaward side of the imaginary line to be drawn from the Light House referred to in the said plan. It is pertinent to note that at para 6 of the affidavit of Mr. E. R. Godinho who was a Member Secretary of the North Goa Planning and Development Authorities he has stated that on 16.06.1997 the respondent no.7 sought development permission for construction of a retaining wall/compound wall around the said property. As such wall was coming along the bank of Mandovi river the matter was referred to the Goa State Committee of Coastal Environment – respondent no.3 herein. Pursuant thereto such wall came to be constructed. The permission granted in the year 1997 is after the Coastal Management Plan was already approved by the Central Government and the compound wall was allowed to be constructed in CRZ II area. In such circumstances,*

allowing the construction of such wall without examining whether it comes on the seaward side of an existing authorised structure as existing in 1991 would totally violate the restrictions and norms of the CRZ Notification of 1991.

35. Another aspect to be noted is that as per the affidavit of the Chief Town Planner, the distance from the Bank to the hotel building is shown to be 23 metres. Even in the inspection report submitted by the Court Commissioner, the distance is more or less the same. But, however, as per the plans which were revised in the year 1997, there are structures including swimming pool, retaining walls, etc, which are prima facie situated within the said distance of 23 metres. The permissions to that effect appear to have been granted in the year 1997 based on the plans produced by Shri H.D. Naik, learned Counsel appearing for the respondent No.1. Such permissions, prima facie, did not meet the restrictions imposed by the CRZ Notification of 1991. In such circumstances, we find that the concerned Authorities including the respondent No.3, now the Goa Coastal Zone Management Authority would have to re-examine the constructions put up by the respondent No.7 in the area towards the river side of an imaginary line to be drawn from the Light House, parallel to the High Tide Line, along the river, across the subject land where the hotel project of the respondent No.7 is located. We have no sufficient material on record to clearly identify the High Tide Line at loco to conclusively ascertain whether any building/structure put up by the respondent no.7 is located towards the river side of such line to be drawn from the Light House parallel to the High Tide Line. If

any construction activity is carried out on the river side it would have to be dealt with by the respondent Nos.1 to 4, after hearing the respondent No.7 in accordance with law, as necessary action would have to be taken in case any such structure violates the CRZ Notification of 1991. As such, we find that the concerned authorities namely the respondent nos. 1 to 4 or now GCZMA would have to re-examine whether the swimming pool, the compound wall or any other development/ construction activity carried out by the respondent no.7 is located towards the seaward side of such line drawn parallel to the High Tide Line from the Light House as pointed out herein above and take necessary action accordingly in accordance with law. To that extent, the said sanction dated 29.11.1991 and the subject revisions stand vitiated.

36. Mrs. N. Alvares, learned counsel appearing for the petitioners has also brought to our notice the fact that the respondent no.7 has kept a path to access the beach between the Youth Hostel and the subject hotel project for the benefit of the public. Such access cannot be obstructed and has to remain open to make the beach accessible to the public at large. It was also pointed out that there are some difficulties to access the beach from such path. The respondent no.2 shall as such take necessary measures to make such path accessible to the public in accordance with law.

37. In view of the above, we pass the following :

O R D E R

The respondent nos. 1 to 4 or any other designated competent authority shall proceed to examine whether

any of the construction activities carried out by the respondent no.7 comes towards the river side of the imaginary line to be drawn from the Light House shown in the plan of the Court Commissioner parallel to the High Tide Line in the manner as stated herein above and thereafter proceed to take necessary action against the respondent no.7 for restoring such area in accordance with law within six months from today.

The respondent no.2 shall take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of the respondent nos.7 and 9.

The respondent nos.7 and 9 shall not obstruct the access of the public to the subject beach through the said reserved path and the respondent no.2 shall take all measures to make such path accessible to the said beach in accordance with law.

Rule is made absolute in the above terms.

The petition stands disposed of accordingly with costs."

Stay of the order was sought for eight weeks and was granted. We have been informed that the challenge was not taken further by the Respondents. The order of the Division Bench has become final.

34. Thereafter, the Authorities prepared a report. This Report was prepared primarily by the surveyors and officers of the Planning Authority. These officers concluded that the construction

was not towards the river side of the Imaginary Line drawn from the Light House parallel to the High Water Line along the river. The report of the Authorities that the directions are complied with was objected to by the Petitioner. Misc. Application 274/2016 was taken out by the Petitioner. Petitioner complained that the Respondents are not following the directions.

35. The Division Bench rejected the Report. The Court observed that the basis taken of High Water Line was not as per the directions issued in the Judgment. The High Tide Line will have to be identified as per the provisions of the Act and the CRZ Notification of 1991. The Bench also observed that it is the task of the GCZMA. Thereafter the Division Bench, by order dated 3 July 2017, granted application for extension of time to comply with the directions.

36. The GCZMA requested the National Centre for Sustainable Coastal Management to draw an imaginary line from the Light House parallel to the High Tide Line. The National Centre for Sustainable Coastal Management (NCSCM) submitted its proposal and indicated the timeline and the costs. This was, however, not taken further.

37. The GCZMA constituted a committee. The site inspection was carried out, stated to be along with the representative of the Petitioner. The report along with the plan was placed before the GCZMA. The Authority in its 154th Meeting held on 1st August 2017, accepted the report and took a decision. GCZMA observed that there is no authentic record of the High Tide Line of the year 1991. It marked the High Tide Line for the year 1991 assuming that there has been continuous erosion on a yearly basis from 1973 to 2017. It calculated the average shift in the High Tide Line in last 43 years. It then calculated the cumulative shift in the High Tide Line 1973 to 1991 i.e for a period of 18 years. It was concluded that no construction of the Hotel is towards the riverside of the imaginary line . It was thus concluded that no action needs to be taken in respect of the Hotel.

38. This conclusion according to the petitioner is a complete eyewash. Petitioner has thus approached this Court by way of this public interest litigation.

39. The Petitioner has prayed to quash and set aside the decision of the GCZMA dated 1 August 2017 to approve the report. It seeks to quash and set aside the Report. It has sought necessary

directions for restoration of the Beach to the public. Directions against the State of Goa are sought to remove the construction in contravention of the directions of the Division Bench .

40. We have heard Ms. Norma Alvares, learned Advocate for the Petitioner, Mr. D. Lawande, learned Advocate General for the Respondents No.1 and 2, and Mr. Rafiq Dada and Mr. Raju Subramaniam, learned Senior Advocates for the the Respondent No.3. We refer to their arguments as the Petitioner, the Authorities and the Hotel.

41. Some positions are settled. The Judgment in WP No.333/1993 has become final and is binding on the parties. The dispute is governed by the CRZ Notification of 1991 and the CRZ-II Zone. The benchmark to test the legality of the Hotel is the High Tide Line.

42. A preliminary objection was raised about the maintainability of the Petition. It was contended that the Petition is filed for execution and enforcement of the Writ of this Court which is not permissible. It was contended that it is contrary to Rule 23 of Chapter XVII of the Appellate Side Rules, 1960. There is no merit in this submission. The Petition is brought in public interest. It is for

the Court to take cognizance of it. Such technical and procedural fetters cannot be placed on the powers of the Constitutional Court to take cognizance of a cause brought before it in public interest. The earlier directions were issued to enforce the Environmental Rule of Law. A complaint is made that the degradation continues. It is nobody's case that the Petitioner has any personal cause or that the order passed benefits the Petitioner personally. The objection raised is more of form than substance and on this ground alone the Petition cannot be rejected.

43. We will now examine the conduct and approach of the Respondents post the directions of the Division Bench dated 29 June 2015.

44. The Authorities prepared two reports to show that the there is no CRZ violations by the Hotel. First Report was rejected by the Division Bench. The Second Report has given rise to the Present petition.

45. Though the Division bench rejected the First Report,we refer to it in detail, as shows the manner in which the Authorities are conducting themselves. More particularly in the context of the finding of the Division Bench and the allegations of the Petitioner,

of collusion.

46. After the Division Bench directed that the High Tide Line be identified, an inspection report was prepared. It was prepared by two Surveyors, Head Surveyor, Supervisor, Superintendent of the Directorate of Settlement and Land Records DSLR, one Municipal Engineer, one Chief Scientist from the Goa Coastal Zone Management Authority, the Member Secretaries of the Planning Authority and the Goa Coastal Zone Management Authority. They referred to the order and details of CRZ-II. They used the primary data before 19 February 1991. They observed that before 1991, only the Cadastral Survey Plans of the Directorate of Settlement and Land Records were the primary data which has been accepted by the Authorities. The secondary data they referred to was the report of the Commissioner appointed by the Court, a Chartered Surveyor, and the Valuer. Then they established the two primary ground control points for plotting the parallel line. They concluded that the High Court had held that there is no material available to identify the High Tide Line and proceeded to adopt the High Water Line as the benchmark. A report was prepared accordingly.

47. When this Report was placed before the Division Bench, the Division Bench rejected it observing thus :

"8. Upon hearing the learned Counsel appearing for the respective parties, we find that this Court had in fact indicated the manner in which the exercise has to be carried out in paras 28, 34 and 35 of the said Judgment. This Court had also observed that such an exercise would have to be carried out by the GCZMA which was the Authority constituted under the Environment Protect Act to examine environmental issues. In such circumstances, we find that constituting a Seven Member Committed, keeping aside the GCZMA by the concerned respondents is not at all justified. As rightly pointed out by the learned Counsel appearing for the petitioner, the HTL would have to be identified in terms of the directions issued by this Court in the said Judgment.

9. In such circumstances, we are not inclined to accept the report filed by the respondents which is stated to be in compliance with the directions issued by this Court in the said Judgment as the directions issued are not in conformity of our Judgment. As such, we direct the GCZMA duly constituted under the Environment Protect Act, to comply with the directions issued by this Court in the said Judgment dated 29/06/2016 in Writ Petition No.333/1993. Needless to say, the HTL would have to be identified in accordance with the Environment Protect Act, 1986 and the CRZ Notification of 1991, within three months. It is made clear that we have not conclusively examined the correctness of the report though, on bare perusal of the said report, the exercise has been carried out on the basis of the High Water Line, which was not the direction issued in the said Judgment."

48. The Division Bench held that the concept of High Water Line was not in consonance with the directions and the law. The State had not involved the Goa Coastal Zone Management Authority. The concept of High Water Line is not in consonance with the Coastal Regulation Zone Notification. This report was on the basis that the Division Bench accepted that there was no data. This team could not have concluded that the Bench itself has acknowledged that there is a lack of data and, therefore, some method would have to be derived. Under what provision the High Water Line was taken as a basis was not specified. The Division Bench accordingly rejected the First Report by order dated 24 October 2016. The order dismissing the first Report and the concept of High Water Line, has not been challenged.

49. Now the Second Report is prepared. The Authorities and the Hotel contend that they have complied with the directions and there is no illegality. We will now proceed to consider whether the Second report can be given any credence.

50. The following team prepared the Second Report. Two Field Surveyors, two Head Surveyors of the Directorate of Settlement and Land Records, one Municipal Engineer, three Expert

Members of the Goa Coastal Zone Management Authority, the Deputy Town Planner, Member Secretary of the North Goa Planning and Development Authority, OSD of the Goa Coastal Zone Management Authority, and the Member Secretary of the Goa Coastal Zone Management Authority The relevant portion of the Report is reproduced for ready reference is as under :

> *"Report in respect of the compliance to the judgment order dated 29/03/2016 in Writ Petition No.333/93 of the Hon'ble High Court of Bombay at Goa in matter of Goa Foundation v/d NGPDA and others and in order of the Hon'ble High Court dated*
> *I. Background*
>
> *1. A report prepared by the Member Secretary, GCZMA, Chief Scientist of GCZMA, Officials of the Department of Survey & Land Records, Municipal Engineer and the Member Secretary, in compliance to the Judgment date 29/03/2016 was submitted before the Hon'ble High Court of Bombay at Goa.*
>
> *2. The Hon'ble High Court of Bombay at Goa vide order dated 24/10/2016 noted that seven member committee was appointed keeping aside the GCZMA has prepared the report. The Hon. High Court therefore directed the GCZMA to demarcate the imaginary line to be drawn from the light house shown in the plan of the court commissioner parallel to the high tide line and to examine whether any of the construction activities carried out by Respondent no.7 comes towards the river side of the imaginary line and thereafter proceed to take*

necessary action against the respondent no.7 for restoring such area in accordance to law in terms of the judgment dated 29/06/2016.

3. The Hon'ble High Court of Bombay at Goa in the Judgment dated 29/03/2016 at para 28 of the said judgment has concluded that the only authorized structure as noted on the basis of the Plan prepared by the Court Commissioner in proximity of the subject plot and adjoining thereto is the light house located close to the Youth Hostel.

II. Survey Details

The structure of M/s. Palms Hotels India Limited is located in PT Sheet No.98, Chalta No.18, P.T. Sheet No.98, Chalta no.17, P.T. Sheet No.98, Chalta No.19, P.T. Sheet No.98, Chalta No.14, P.T. Sheet No.116 Chalta no.1 and the light House in the premises of Youth Hostel located in PT Sheet No.98 of Chalta no.13. There is a parcel of land bearing PT Sheet no.79 of Chalta no.1 which is adjoining and abutting towards the river side of PT Sheet No.98 chalta no.18 of M/s. Palms Hotels India Limited and Sheet No.98 of Chalta no.13 of Youth Hostel. There is also a light house situated in PT sheet no.79 of Chalta no.1 near Kala Academy.
The said property of M/s Palm Hotel in bounded by;
Northern Side : PT Sheet no. 98 Chalta no.13 property of Youth Hostel
Southern Side : PT Sheet no. 117 Chalta no.1
Eastern Side : Public Road
Western Side : PT Sheet no.79 Chalta no. 1 followed by river

III. Inspection and Survey

1. Site inspections and visits were conducted by the Goa Coastal Zone Management Authority (GCZMA), North Goa Planning and Development Authority (NGPDA), Directorate of Settlement and Land Records (DSLR), Corporation of City of Panaji and Town and Country Planning Department on 10-02-2017 & 10-07-2017.

2. During the inspection in the survey the cadastral survey plans/records of the DSLR was utilized.

3. During the inspection and survey on 10/07/2017 the representative of the Petitioner Dr. Claude Alvares and Dr. Antonio Mascarenhas stated that the existing retaining wall along the river has to be considered as the high tide line and the same has to be demarcated on the survey map as the high tide line.

4. The Petitioner thereafter stated that imaginary line should be drawn from the light house located in the premises of youth hostel parallel to the HTL in PT Sheet No. 98 of Chalta no. 13 of Youth Hostel and PT Sheet no. 98 Chalta no. 18 of M/s Palms Hotel India Limited and the structure lying beyond the imaginary line so drawn towards the river side should be demolished.

5. During the Inspection and survey, the distance between the retaining wall and the light house present in the Youth Hostel premises was measured as 24.50 meters.

6. The representative of M/s Palms Hotel India Limited objected to the demarcation of the High Tide

Line as of today based on the existing retaining wall stating that their construction licenses were issued in 1991 and hence the High Tide Line should be demarcated as of 1991. The representative also said that the order of the Hon'ble High Court dated 24/10/2016 states that the HTL has to be demarcated in accordance to the Environment Protection Act, 1986 and CRZ notification 1991.

7. M/s Palms Hotel India has submitted that the Hon'ble High Court in its judgment dated 29/06/2015 observed at Paragraph 35, there is no sufficient material on record to clearly identify the HTL at loco as of 1991. It is the submission of M/s Palms Hotel India that the land mass bearing Chalta No.1 P.T. Sheet No. 79 of City Survey Panaji belonging to the Government of Goa adjoining and in front of the Hotel side even if submerged has to be taken into consideration while plotting HTL as of 1991.

8. There is no authenticated HTL demarcated as of 1991 in the records of the GCZMA and during the period 1991 to 1997 the GSCEE was performing the function of implementation of the CRZ Notification, 1991.

9. There is substantial evidence of enormous erosion and subsequent submergence of land mass which includes the land mass bearing Chalta No 1 P.T. Sheet No. 79 and Chalta No 18 of P.T. Sheet No. 98.

10. The Cadastral Survey Plan of the Directorate of Settlement and Land Records is the only authenticated Government document accepted by any Government

Departments or agencies for granting approval related to development works and for ground validation of properties and land parcels in the State of Goa. These Plans are promulgated and notified by the Government of Goa.

11. In such circumstances the members have relied on the two Ground Control Points established earlier during the survey for plotting of the parallel line. The Light House denoted as Point A and Point A1 is the point drawn perpendicular from the light house to the line of intersection of the land with the water surface, in the Cadastral Plan of Chalta No. 1 of P.T. Sheet No. 79. The said Chalta No. 1 of P.T. Sheet No. 79 is Government land abutting and adjoining the Chalta No. 18 of P.T. Sheet No. 98 of M/s Palms Hotel India Limited towards the riverside which is presently submerged in the water.

12. The boundary of the Chalta No. 1 of P.T. Sheet No. 79 which is abutting the river as shown in the Cadastral Plan marked in Blue denoted as S1, S2, S3, S4, and S5 on the Cadastral Plan annexed herewith has been considered as the High Tide Line as of 1973 i.e when the Directorate of Settlement and land records had conducted Cadastral Survey and promulgation of Records of rights.

13. The existing retaining wall along the bank of river Mandovi has been considered as the High Tide Line as of 2017 and marked in Brown colour. The High Tide Line as demarcated in the Court Commissioner plan along the collapsed retaining wall is marked in Magenta Colour.

14. Since there is no authentic record of the High Tide Line of the year 1991 the High Tide Line for the year 1991 has been marked in Green Colour on the plan assuming that there has been continuous erosion on yearly basis from 1973 to 2017. The distance between the High Tide Line of 1973 and High Tide Line of 2017 is at Point S1 is 75 meters at S2 it is 60 meters, S3 is 46 meters, S4 is 48 meters and S5 is 12 meters as depicted in the plan attached to this report.

15. The average shift in the High Tide Line in last 43 years i.e from 1973 to 2017 is 1.74 meter per year from point S1, 1.4 meter per year from point S2, 1.06 meter per year from point S3, 1.11 meter per year from point S4 and 0.28 meter per year form point S5.

16. The cumulative shift in the High Tide Line 1973 to 1991 i.e for a period of 18 years is calculated by multiplying average shift per year into 18 at every point, which is resulting to 31.32 meters at point S1 and depicted as S_1 on the plan, which is resulting to 25.00 meters at point S2 and depicted as S_2 on the plan, which is resulting to 19.00 meters at point S3 and depicted as S_3 on the plan, which is resulting to 19.98 meters at point S4 and depicted as S_4 on the plan and which is resulting to 5.00 meters at point S5 and depicted as S_5 on the plan.

17. The High Tide Line of 1991 is thus depicted on the plan by joining S_1,S_2, S_3,S_4 and S_5 marked in green colour.

18. An imaginary line marked in Red Colour denoted

as P_1, P_2, P_3, P_4 and P_5, parallel to the High Tide Line of 1991 as marked in Green Colour from the Light House located in the premises of the Youth Hostel maintaining equidistance of 24.5 meters, considering the light house as the base point was plotted.

19. The imaginary line parallel to the boundary so drawn is extended into the Chalta No.18 of P.T. Sheet No.98 of M/s. Palm Hotels India Ltd. as shown in the cadastral plan annexed.

20. On perusal of the said demarcation of the imaginary line on the Cadastal Plan it is seen that there are no construction activities carried out by the Respondent No.7 in the area beyond the imaginary line towards the riverside.

21. The Respondent No.7 has produced a document obtained from the office of the Water Resources Department, Panaji which shows that the tender for the retaining wall (presently collapsed) was issued in 1978. The said document is annexed herewith as Annexure II. Since this document was produced by the Respondent No.7, the same is mentioned herein.

22. The records from the Department of Survey and Land Records also indicate that the Plot bearing Chalta No.1 of P. T. Sheet No.79 belonging to the Government, which is adjoining and abutting Chalta No.18 of P.T. Sheet No.98 of M/s. Palm Hotels India Ltd extends upto Kala Academy wherein there exists a Light House. The said Light House has also been depicted in the plan submitted by the Court Commissioner. The said Light House is the authorised structure nearest towards the

riverside prior to 1991 located in plot abutting/adjoining the plot of the Respondent No.7 i.e. Bearing Chalta No.18 of P.T. Sheet No.98.

23. The detailed plan in scale 1:2000 depicting the High Tide Line of 1973, 2017, 1991 and imaginary line with respect to the High Tide Line of 1991, Light house in premises of the Youth Hostel, Light House opposite Kala Academy in Chalta No.1 of P.T. Sheet No.79, the hotel building, swimming pool and retaining wall of the respondent No.7, in Chalta No.18 of P.T. Sheet No.98 is annexed herewith as Annexure I.
Official associated in site inspection :
1. Shri Sachin Chowdhary, (Field Surveyor, D.S.L.R.)
2. Shri Rajesh Harmalkar (Field Surveyor, D.S.L.R.)
3. Shri Nitin R. Mantri (Head Surveyor, D.S.L.R.)
4. Shri Arunkumar S. Dhale (Head Surveyor, D.S.L.R.)
5. Shri Veeraj G. Naik, Bholnekar, (Municipal Engineer Gr III) Corporation of City of Panaji.
6. Dr. Prabhakar Shirodkar (Expert Member -GCZMA),
7. Shri Audhut J. Bhonsule (Expert Member – GCZMA),
8. Prof. Suhas Godse (Expert Member – GCZMA)
9 Shri R. N. Volvoikar (Dy. Town Planner -TCP, Panaji)
10. Shri Pandita, Member Secretary – NGPDA
11. Shri Sanjeev Joglekar, O.S.D., GCZMA
12. Shri Parag Nagarcekar, Member Secretary - GCZMA"

51. In the report, it is stated that a field inspection was carried out. The team also refers to the Cadastral Survey Plan of the Directorate of Settlement and Land Records as the only authenticated

government document. After that, the team relied on two ground control points established during the earlier survey. Then it recorded that there is no authentic record of the High Tide Line of 1991 and one had to consider the average shift in the High Tide Line from the year 1973 to 2017 and to draw an imaginary line. Then they calculated the erosion of soil and drew a map stating the ultimate conclusion of this report along with the map is that the Hotel does not breach any provision of Coastal Regulation Zone Notification of 1991.

52. The Report, along with the plan, was placed before the Goa Coastal Zone Management Authority. The Authority in its 154th Meeting held on 1st August 2017, accepted the Report and took a decision. The Authority concluded that :

> *"14. Since there is no authentic record of the High Tide Line of the year 1991 the High Tide Line for the year 1991 has been marked in Green Colour on the plan assuming that there has been continuous erosion on yearly basis from 1973 to 2017. The distance between the High Tide Line of 1973 and High Tide Line of 2017 is at Point S1 is 75 meters at S2 it is 60 meters, S3 is 46 meters, S4 is 48 meters and S5 is 12 meters as depicted in the plan attached to this report.*
>
> *15. The average shift in the High Tide Line in last 43 years i.e from 1973 to 2017 is 1.74 meter per year*

from point S1, 1.4 meter per year from point S2, 1.06 meter per year from point S3, 1.11 meter per year from point S4 and 0.28 meter per year form point S5.

16. The cumulative shift in the High Tide Line 1973 to 1991 i.e for a period of 18 years is calculated by multiplying average shift per year into 18 at every point, which is resulting to 31.32 meters at point S1 and depicted as S_1 on the plan, which is resulting to 25.00 meters at point S2 and depicted as S_2 on the plan, which is resulting to 19.00 meters at point S3 and depicted as S_3 on the plan, which is resulting to 19.98 meters at point S4 and depicted as S_4 on the plan and which is resulting to 5.00 meters at point S5 and depicted as S_5 on the plan.

17. The High Tide Line of 1991 is thus depicted on the plan by joining S_1,S_2, S_3,S_4 and S_5 marked in green colour.

18. An imaginary line marked in Red Colour denoted as P_1, P_2, P_3, P_4 and P_5, parallel to the High Tide Line of 1991 as marked in Green Colour from the Light House located in the premises of the Youth Hostel maintaining equidistance of 24.5 meters, considering the light house as the base point was plotted.

19. The imaginary line parallel to the boundary so drawn is extended into the Chalta No.18 of P.T. Sheet No.98 of M/s. Palm Hotels India Ltd. as shown in the cadastral plan annexed.

On perusal of the said demarcation of the imaginary line on the Cadastal Plan it is seen that there are no

construction activities carried out by the Respondent No.7 in the area beyond the imaginary line towards the riverside."

53. Thus the gist of the conclusion is this: Since there is no authentic record of the year 1991, the High Tide Line for the year 1991 has been marked assuming that there has been continuous erosion on a yearly basis from 1973 to 2017. The distance between the High Tide Line of 1973 and High Tide Line of 2017 at different points is depicted. The average shift in the High Tide Line in the last 43 years i.e. from 1973 to 2017 has been calculated. The cumulative shift in the High Tide Line 1973 to 1991 i.e. for a period of 18 years is calculated by multiplying average shift per year into 18 at the relevant points. Thus HTL of 1991 is deduced. An imaginary line parallel to the High Tide Line of 1991 is marked from the Light House maintaining equidistance of 24.5 meters. The imaginary line parallel to the boundary is also drawn. It is seen that there are no construction activities carried out by the Hotel in the area beyond the imaginary line towards the riverside.

54. The Authorities and the Hotel contend that there is no authentic data from the year 1991 available and the Division Bench has acknowledged this position. They have argued that the Second

Report is a product of expert input and the Court should give deference to it. The decisions in the case of *Secretary and Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samity and ors,* [4] and in the case of *Neetu Singh Markam vs. State of Madhya Pradesh and ors.* [5] were cited by the Respondents to stress upon the fact that the Goa Coastal Zone Management Authority is an expert body and it must be given due deference. It was contended that the allegations of mala fides, without joining those as party respondents, cannot be made. The decision in the case of *E.P. Royappa vs. State of Tamil Nadu and anr* [6] was cited by the Hotel to contend that the burden of establishing the mala fides has been not been discharged in respect of the Goa Coastal Zone Management Authority, the expert body in the field which has arrived at a certain decision. None of the officers have been joined as parties, nor any mala fides have been attributed.

55. Firstly, we will deal with the fundamental assumption in the Second Report that the High Court also has accepted that authentic data of 1991 is not available and therefore experts had to find a way to ascertain the HTL in the circumstances.

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[4] (2010) 3 SCC 732

[5] (2014) 4 MP LJ 203

[6] (1974) 4 SCC 3

56. The State and the Hotel contend that the Division Bench had recognized the absence of the data and, therefore, directed the State to carry out the exercise of drawing the High Tide Line. They rely on the observations of the Division Bench more particularly where the bench has said: "we do not have sufficient material to identify the High Tide Line at loco". The Petitioner contends that the State and the Hotel withheld the data from the Court and what court meant was that material is not placed *before the Court*, and not that it does not exist.

57. The contention of the Petitioner is correct. The observations of the Division Bench cannot be torn out of context. They will have to be read with other the observations made in the Judgment. We reproduce some of the relevant comments:

> *"The burden must lie on the developer to establish entitlement before the authority before whom he seeks a sanction. The law imposes an absolute and unconditional obligation upon the developer to make a full, fair and candid disclosure to the sanctioning authority of all the features of the proposed development and to demonstrate that the development will not have a deleterious effect on the environment. The material disclosed to the authority constitutes the basis for the grant of sanction or permission. Consequently, a failure to disclose all the relevant material and information will invalidate the grant of sanction. The provisions such as*

CRZ Notification of 1991 are conceived in the public interest, the interest which protects the welfare not merely of the society as it exists, but the society of the morrow....

x

Apart from that the concerned Authorities, while granting the permissions for such constructions, have clearly noted that the project was coming within the CRZ-II area. In such circumstances, the whole exercise by the respondents to take a stand contrary to the express provision of the CRZ Notification of 1991 and assume that the hotel project of the respondent no.7 did not fall within the Coastal Regulation Zone is not at all justified....

x

...In such circumstances, the action by the authorities to permit the hotel project without complying with the restrictions of the CRZ Regulations is not at all justified as the said project was within 100 metres from the High Tide Line of the river.

x

...These aspects, read with the facts as enumerated herein above can be taken note of to examine the legality or the malice in law by the authorities in issuing the concerned sanctions to the respondent no.7.

x

... Thus, we find that the conduct of the concerned authorities of the State Government in complying with the well recognized aims and objects of the Environment (Protection) Act and the CRZ Notification of 1991 are found wanting by acting in breach of such enactments. The whole conduct appears to be to allow a hotel project of the respondent no.7 without examining the norms as

provided in the CRZ Notification of 1991.

x

The conduct of the respondent nos. 1 to 4 and the concerned authorities appears to be aimed solely to enable the respondent no.7 to put up the subject hotel project in the said property without examining the relevant provisions of law. In order to attain such objective, the authorities have indulged in legal stimulation to achieve their goal to allow the hotel project to come up without examining whether the norms of the CRZ II areas have been strictly adhered to. We are accordingly satisfied that the sanctions granted to the respondent no.7 for the hotel project are vitiated by malice in law and colourable exercise of power as the whole exercise was to reach an end different from the one for which the power has been entrusted to the said authorities.

x

Such divergent stand taken by the respondent no.7 would clearly indicate that the respondent no.7 are trying to play a game of hide and seek and did not come in a straight forward manner accepting the legal position and disclosing the requisite material to ascertain whether the provisions of the CRZ Notification of 1991 have been violated by the respondent no.7.

x

The respondent no.7 has failed to make a full, fair and candid disclosure of all the facts to discharge the burden that they were entitled for such sanction.

x

Even along with the affidavit filed by the respondent no.7 no such application nor construction licence have been produced. There are only references to such licence

in the affidavit. Based on such references and documents produced by the petitioners, we have already found that the permissions were granted on the assumption that the subject land was within CRZ II area.

x

As already pointed out herein above, CZMP was not approved by the Central Government at that stage and as such the restrictions as imposed under the CRZ Notification of 1991 had to be complied with and the respondent could not arbitrarily grant a sanction to the respondent no.7 to put up the structures which were contravening to the provisions of the CRZ Notification of 1991.

x

We have to keep in mind that the provisions of the CRZ Notification have been conceived to maintain high public purpose to subserve in protecting the ecology and conserving the environment.

x

The stress was laid by the respondent no.7 to exercise jurisdiction by moulding the relief and avoid any demolition of the hotel project of the respondent no.7. Such discretion cannot be exercised which would encourage illegality or perpetual illegal unauthorised construction."

58. The Division Bench had stressed on the responsibility of a project proponent to show that its actions are environmentally benign. The Division Bench observed that even the basic permissions in respect of the project were not forthcoming. The Division Bench

had rejected the contention that the CRZ Notification of 1991 did not apply to the Hotel. It had held that the construction has to be tested according to the mandate of the CRZ Notification of 1991. The Division Bench had also rejected the contention that the CRZ Regulations are not applicable to the projects located on the river bank subjected to tidal effect. The Division Bench had observed that there was malice in law. The Division Bench concluded that the conduct of the concerned Authorities was found wanting and it appeared to allow a Hotel project without examining the norms as provided in the CRZ Notification of 1991. The Division Bench held that the sanction granted to the project proponent was vitiated by malice in law and colourable exercise of power.

59. These observations do not show that the Division Bench had any doubt about the existence of the record for ascertaining the High Tide Line. On the other hand, the Bench was dismayed at the conduct of the respondents in withholding and misinterpreting the data. There is no indication whatsoever that the Division Bench had acknowledged and condoned the absence of data from the year 1991. Nor any permission was given by the Bench on that premise to invent new methods. It was not that Division Bench had rejected the charge of the Petitioner that the State and the Hotel had withheld the

data.

60. It was contended on behalf of the Hotel that the Division Bench had itself recorded the existence of the official structure towards the seaward side and, therefore, when it observed that the High Tide Line would have to be drawn, this material was also before the Division Bench. Nothing much turns out on this aspect. While discussing as to what was the material before it, the Division Bench made certain observations regarding the Light House. However, after stating so, the Division Bench again reiterated that the burden was on the Hotel to disclose all the material which would justify the sanction as per law and the Hotel had failed to do so.

61. The Division Bench had, in fact, criticized the Hotel for taking differing stands. At one stage, Hotel had claimed that the Coastal Regulation Zone Notification of 1991 was not applicable. Then it contended that the set-back from the river bank should only be 10 metres. Then it stated that the some remnants in the river be considered as an authorised structure. These differing stands compounded the nonproduction of the critical original applications and permissions. The Hotel had failed to make a full, fair and candid disclosure.

62. With this backdrop, the Division Bench made the observations that it did not have sufficient material on record to identify the High Tide Line at loco. This did not mean that there was no material at all or that it condoned this position. It only meant that there was no material placed before the Court and was withheld.

63. The Petitioner has rightly pointed out that the Division Bench has not used the words 'drawing' the High Tide Line in the operative portion of the order, but *identifying* the High Tide Line. The use of the word *'identifying'* is deliberate. The Division Bench meant that the High Tide Line exists and it was only to be identified in front of the Hotel.

64. This allegation of violation of CRZ notification is not a unique situation that has occurred for the first time in Goa. From the time the Coastal Regulation Zone has come in being, for last more than two decades, the State has been regularly enforcing the notification. National Green Tribunal and the Goa Coastal Zone Management Authority have been constituted. The High Tide Line, a core test for the CRZ, is repeatedly relied upon before the Authorities and the High Court. There are Petitions relating to the CRZ on the board of this Court almost every week. The existence of HTL in Goa was so apparent that it was not necessary for the

Division Bench to state in specific terms that the High Tide Line exists and, therefore, it does not need to be drawn afresh only for the Hotel. The Division Bench, therefore, directed that it be 'identified'.

65. When the Hotel construction commenced, the Petitioner moved the Court immediately in the year 1993. Thereafter, the Petition remained pending until it was disposed of in the year 2015. The issue of CRZ violation by the Hotel was raised in the year 1993 and is pending. Now the Authorities state they find it difficult to ascertain the HTL as of 1991. If the litigation was pending since 1993, the State and the Hotel should have kept the relevant data. Any prudent business entity will preserve the record, more particularly when a Petition challenging its construction is pending. There is no explanation forthcoming.

66. Therefore, when the Division Bench observed that it had no material before it, it was referring to the non-action of the Respondents in presenting the material before the Court, not that there was no material in existence. The interpretation by the Authorities and Hotel to the contrary is perverse and is liable to be rejected. It is nothing but the continuation of the brazen conduct already taken note of by the Division Bench.

67. Now to the second argument of the Respondents that the product of expert input must be given due deference. As a general proposition of law, there can be no dispute about it. Question is whether it can be invoked in the facts of the present case. Further, if the law mandates a particular a yardstick to be used by the experts, the Court is entitled to examine if the yardstick applied is legally permissible. It may be that the exact degree of soil erosion over the years is a matter of expertise, but the Court can undoubtedly ascertain whether the concept of soil erosion itself is contemplated in law. Merely because the report is stated to be prepared by experts, any illegal criterion cannot be pushed through.

68. The High Tide Line has been defined explicitly under the notification governing the Coastal Regulation Zone. The Division Bench has already referred to the concept of Coastal Zone Regulation and the definition, observing thus :

> *"17. ... The term High Tide Line means "the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that*

> *occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm". Hence, the High Tide Line is the line of intersection of land with the water surface. …In such circumstances, the High Tide Line will be the line on the land up to where the highest high tide reaches at spring tide."*

This the position of the High Tide Line in law as per the Notification is recognized by the Division Bench.

69. In the Second Report, the Authorities are not going by this definition, but by an interpolated line with water line and soil erosion added. Soil erosion is not a criterion used to derive the High Tide Line in Goa or elsewhere. No decision invoking the concept of soil erosion in any case in the State of Goa has been placed before us.

70. The interpolated line mixing the High Water Line data of 1973 with the High Tide Line data of 2017 and working out soil erosion, is a concept alien to the definition of the High Tide Line. One of the foundations for the second report is a High Water Line data of the year 1973. The Division Bench did not accept the concept of High Water Line in the order dated 24 October 2016

when it rejected the first report. Again the High Water Line is brought in.

71. The Petitioner has pointed out that when an inspection was carried out for the preparation of the Second Report a representative of the Petitioner was present. At that time, a visual inspection was carried out, but when the report was submitted, the representative of the Petitioner had not signed the same. The Second Report refers to a site visit, but there is no reference as to who introduced the concept of interpolated line and the concept of soil erosion. There is no specific decision to adopt this methodology. The GCZMA has approved the report, but it does not state that it had given specific directions to prepare the report on the basis of such an interpolated line. If the concept of interpolated line and soil erosion has to be introduced while demarcating the High Tide Line, the same decision will have to be taken uniformly in the State or there must be reasons as to why such a decision is taken. The GCZMA is entrusted with the task of ensuring that the Coastal Regulation Zone notifications are implemented in letter and spirit. It is necessary that the GCZMA should have taken a conscious decision. Even assuming that it is permissible in law to introduce a new concept of measuring the High Tide Line, the report does not disclose any such policy or

a legal decision.

72. The Petitioner is right in contending that an entirely different standard is being adopted for the concerned Hotel. This is not how the Authorities mark the Coastal Regulation Zone in Goa when they deal with the allegations of violation of the Coastal Regulation Zone. The Authorities is under a bounden duty to identify the High Tide Line as it existed in the year 1991. They cannot state that they have no data from the year 1991 and, therefore, they will draw the High Tide Line based on any concept that the Authorities find it convenient. The GCZMA is an Authority under the Notification and is bound by the same. It is not open to its members to create new concepts for drawing the High Tide Line or new criteria of the Coastal Regulation Zone. Even assuming that it is permissible, how that is being done only for few hundred metres in the entire stretch of coastal line, is also not justified.

73. The Second Report has also resulted in an absurd situation. The Petitioner has pointed out that the High Tide Line, as per this report, is now right in the water of the river. This goes against the very concept of the High Tide Line.

74. While submitting the Second Report, again the State has introduced a concept of interpolated High Water Line which is entirely outside the definition of the High Tide Line. How the concept of erosion of river bank over the years and annual change in the location of High Tide Line is legally justified, is not explained. How the year 1973 has any relevance, is not explained. The concept of Coastal Regulation Zone came in the year 1991. Thereafter, the soil erosion from 1991 to 2017, is an entirely alien concept has been taken into consideration. The Division Bench has already commented on the differing stands. Now the High Water Line of 1973 plus soil erosion is a new stand that is taken. Therefore, as far as the Hotel is concerned, the High Tide Line drawn is on an entirely different parameter than the rest of the State. It is nowhere in the directions of the Division Bench to undertake an exercise of this nature. The Division Bench had directed not once, but twice, to identify the High Tide Line as per the definition of the 'High Tide Line' and as per the Coastal Regulation Zone Notification. The State accepted this direction of the Court. The State is not implementing this direction on the ground that the Division Bench itself gave this freedom to draw the line outside the concept of the notification, because there was no data available. This is a perversion of the observations of the Division Bench which had in fact

concluded that the Respondents had withheld data from it.

75. The Authorities and the Hotel have criticized the map-cum-sketch drawn by the Petitioner. It is contended that the map is not signed and such a map cannot be relied upon. There is no scale to the map, there is no legend and it is not explained that what happened to the land between the blue and black line and that the Government Plan is more credible. There is no merit in these submissions. First, if a violation of the Coastal Regulation Zone is brought before the Court, the Authorities, which have all the data, must produce it before the Court to show whether the charge is correct or not. The Authorities have failed to do so. It cannot be contended that the violations do not exist because the map produced by the Petitioner is incorrect. The Petitioner is neither a Surveyor nor an Authority under the Act and Notification. The Petitioner has only taken the data as available and has drawn a sketch in furtherance of its submission. Even if the sketch prepared by the Petitioner is kept aside, it does not mean that a conclusion can be drawn that there is no violation of the Coastal Regulation Zone. The sketch drawn by the Petitioner is merely a visual representation of its argument as to how the matter needs to be looked at.

76. It was contended by the Hotel that the Division Bench

had observed that the Light House which is shown at point 'A' in the plan annexed to the Second Report is only the authorised structure towards water side and since the Hotel is behind the authorised structure, it cannot be held to be illegal. Had the Division Bench concluded the issue as argued, then the Bench would have straight away found that the Hotel was not unauthorized. However, the Division Bench has not done so and instead has made various observations referred to earlier. The Division Bench observed that after the High Tide Line is identified, an imaginary line be drawn, and necessary steps are taken as per law.

77. The Respondents contended, based on the decision of the Division Bench in *Overseas Chinese Cuisine (India) Pvt. Ltd. & another vs. The Municipal Corporation of Greater Bombay & other*[7], that there are doctrines of Containment and Toleration. Firstly ,we are not going beyond what is already concluded by the Division Bench. The State has already made it clear that all permissions were processed on the basis of CRZ II zone. The question now is of the High Tide Line and the legally permissible criterion to identify it.

78. The Hotel contended that in respect of the rivers which

[7] 2000 (1) Bom.CR 341

are subject to tidal movement, soil erosion will be apparent and the Court should take note of the same for the purpose of the High Tide Line. It was contended that the High Tide Line is never constant and may change in case of rivers. It is not pointed out to us that soil erosion of rivers is a part of the definitions of the Coastal Regulation Zone or the High Tide Line.

79. The Petitioner's conduct and the relief sought were criticised by the Respondents. It was contended that various options placed before the Court by the Petitioner and directions sought are not in consonance with the earlier orders of the Court. It was contended that the interpretations of the map are also incorrect. As stated earlier, we are concerned with the primary facet as to the infringement of the Coastal Regulation Zone Notifications to be tested within the parameters of the Coastal Regulation Zone. That the primary task of the Authorities which they have to perform within the ambit of law.

80. The Respondents have taken us in great detail through the map annexed to the second report to justify the Second report. We have to keep few basic positions in mind lest we get lost in a maze. The Petitioner has brought before us a cause in public interest. We are not experts in identifying the High Tide Line. That is the

work of the Authorities. They have to identify it as per the law and decide whether a particular construction violates the Coastal Regulation Zone. The concept of High Tide Line is uniform and fixed, but the Authorities are making it complex. The First Report contained an impermissible criteria of High Water Line. The Second Report added another impermissible criterion of soil erosion. This is nothing but an attempt to take the enquiry away from ascertaining the truth. The High Tide Line will have to be drawn as per law, and it is not for the Authorities to invent a new set of rules and criteria for a single construction. The Hotel cannot enjoy a special status.

81. The Respondents contended that none of the officers who prepared the Second Report are joined as party Respondents, nor any specific allegation are made to sustain the charge of malafides. There is no merit in this contention. The case is of Malice in Law. The Supreme Court has explained the concept of malice in Law in public law field in the case of *Kalabharati Advertising v. Hemant Vimalnath Narichania* [8]. It is held that 'legal malice' or "malice in law" means something done without lawful excuse. When malice is attributed to the State, it is an act which is taken with an oblique or indirect object. It means the exercise of statutory power for purposes foreign to those for which it is in the law intended. It means

[8] AIR 2010 SC 3745

a conscious violation of the law with a depraved inclination on the part of the authority, which intent is manifested by its injurious acts. The Division Bench has already noted that the Authorities have made attempts to somehow protect the Hotel. The Bench considered the very same argument and attributed legal malice to the Authorities of the State. The same conduct and intent constituting legal malice has continued by the GCZMA. It was expected that atleast after the Division Bench made the observations, the Respondents-Authorities would act within the bounds of the law and to carry out the exercise as directed. The manner in which the two reports are prepared clearly indicates that the Authorities have made up their mind not to draw the correct High Tide Line as existed in the year 1991 within the parameters of the Coastal Regulation Zone Notification.

82. Assuming for the sake of arguments that the data to draw the line as per the Notification is not available, there could have been another methodology employed in the circumstances. Before the definition of the High Tide Line as understood came into being, a practice was being followed in Goa. This has been explained and acknowledged in the case of *The Goa Foundation and anr. vs. State of Goa and others* [9]. Referred to as the *GTC Industries* case. In this

[9] 2000 (2) Goa LT 174

case, a question arose regarding an order of the State approving demarcation of the High Tide Line not in consonance with the Coastal Regulation Zone Notification dated 19 February 1991, as amended on 16 August 1994. The Division Bench of this Court had taken note of the practice followed in the State of Goa prior to demarcation of the High Tide Line in the State of Goa. A query was raised with the Chief Town Planning Officer regarding demarcation of the High Tide Line prior to its demarcation by the Survey of India, it was stated that the entire coastal area up to 500 metres from the High Tide Line was prepared as per the Cabinet decision in 1992 and the norms followed by the Town & Country Planning were to measure the High Tide Line from the permanent vegetation line which existed on the landward side of the shore and in absence of the vegetation line on the shore, the boundary of the property abutting the shore was taken as a High Tide Line. It was the procedure which consistently followed for approving the projects by the Government prior to the demarcation of the High Tide Line by the Survey of India in 1991. The Court observed thus :

> *".. It is thus clear that as upto 26.7.94 when the Under Secretary (Revenue) wrote to the Chief Town Planner, Govt. of Goa, the State Committee of Coastal Environment and its predecessor Committees was following the High Tide Line being the pioneer/permanent vegetation line which exists on the*

> *landward side of the shore line. Where the pioneer/vegetation line was not existing on the shore, the boundary of the property abutting the shore was taken as the HTL."*

83. This decision of this Court in the case of *GTC Industries* was challenged in the Apex Court and the challenge was disposed of as subsequently, the High Tide Line was demarcated as per the Coastal Regulation Zone 1991 as amended in 1994. However the observation of the Division Bench that it was a practice in the State of Goa in the past to take the High Tide Line by taking it as boundary of the property touching the shore as the High Tide Line, remains as a factual position. It is also not that no data exists to adopt the methodology indicated in the *GTC Industries.* The Chief Town Planner, in the earlier round, had placed on record the distance of the river from the plinth of the Hotel building. The approved plans of the year 1991 will also show where the boundary of the property in question lies and the information supplied by the Chief Town Planner is available. Therefore, there was another method which could have been invoked by default. This also has been completely ignored in the Second report and a third haphazard method is evolved.

84. The Second Report and the decision of the GCZMA cannot be sustained and will have to be set aside.

85. The respondents relied upon the decision of this Court in the case of *Goa Foundation vs. Goa State Coastal Zone Management Authority & Ors.*[10]. They contended that the Court, in this case, has held that the scope of judicial review in environmental matters is limited and has made some general observations. The Court in this case has primarily based its decision on the judgment of the Apex Court on the policy matters in the contractual sphere. The Court, however, has not referred to various decisions of the Supreme Court rendered specifically on the environmental issues. Right to clean environment is a fundamental right under Article 21 of the Constitution of India. The Supreme Court has taken an overview of its decisions on the subject in the case of *Karnataka Industrial Areas Development Board v. C. Kenchappa*[11]. We are bound by the series of the decisions of Supreme Court laying down a vast body of environmental jurisprudence.

86. The Supreme Court in the case of *Indian Council for Enviro-Legal Action vs. Union of India and ors.*,[12] has stressed the

[10] 2001 (4) BomCR 226
[11] (2006) 6 SCC 371
[12] (1996) 5 SCC 281

need to enforce the environmental regulations. The Supreme Court has held that the enactment of a law, but tolerating its infringement, is worse than not enacting a law. The tolerance of the breach not only nullifies the legal provisions, but it also encourages further lawlessness. The people, through the Parliament, have promulgated laws to protect the environment and save it for the future generations to ensure a good quality of life. If the laws are not being voluntarily obeyed, then they have to be enforced for larger public good. The Parliament has recognized that violation of the environmental laws adversely affects the quality of life. The non-enforcement results in ecological imbalance and degradation of the environment. These goals set by the Parliament cannot be allowed to be nullified by executive inactions and recalcitrance.

87. Thus it is clear that deliberately a situation of absence of data of 1991 is being created to avoid drawing the High Tide Line. This is not a genuine case of missing data. It is an attempt to create an artificial situation to introduce a convoluted method to suit one particular establishment. The following observations of the Supreme court in *Shanti Sports Club v. Union of India* [13], aptly apply to the present case:

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[13] (2009) 15 SCC 705

> *"75. Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus…*
>
> *… It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."*

88. The burden is on those who seek to construct in the coastal zone to show that their actions are environmentaly benign. If the data is not forthcoming, the sequitur is that the project proponent has failed to discharge the burden. Therefore, in the facts of the present case, the absence of data, if any, cannot enure to the benefit of the Hotel, but the position is against it.

89. It is, however, clear that the work of identifying the High Tide Line and the parallel line will have to be carried out in view of the directions of the Division Bench. There is also a need to put an end to the controversy at the earliest and conclusively. However, the

Respondents-Authorities cannot be entrusted this task any further. We have to entrust the task to a competent official outside agency.

90. In the 138th meeting of the Goa Coastal Zone Management Authority held to consider the Second Report, the Authority has referred to the National Centre for Sustainable Coastal Management (NCSCM), Chennai. It appears that the GCZMA had made a request to the NCSCM on 2 January 2017 to carry out the exercise. The NCSCM had submitted its proposal for carrying out the survey and submit a report and had also indicated the time-frame and the costs. The NCSCM had sought time of 120 days. It appears that the GCZMA did not take this proposal further on the ground that there was shortage of time. The GCZMA could have sought for extension of time from the Court if the NCSCM needed further time. No such effort was made. The proposal of the NCSCM was not taken further and the GCZMA, thereafter, carried out the exercise of preparing the Second Report.

91. National Centre for Sustainable Coastal Management, Chennai, Tamil Nadu is an Authority under the Ministry of Environment and Forests. It is established for the purpose of better protection, conservation, rehabilitation, management and policy design of the Coasts. Its function is to promote integrated and

sustainable management of the coastal and the marine areas in India and to advise the Central and the States Governments on policy and scientific matters. The NCSCM is also an authorised agency by the MoEF to demarcate the High Tide Line and Low Tide Line for the purpose of Coastal Regulation Zone. Therefore, the NCSCM is not only the expert body to undertake this task, but it also functions as an agency of the MoEF. In fact, the GCZMA had already proposed the NCSCM to carry out the work of identifying the High Tide Line. As we have stated earlier, we are not prepared to entrust the task of identifying the High Tide Line with the Respondents-Authorities any further. The task, therefore, will have to be entrusted to the NCSCM. Since this situation has been brought about in the circumstances which we have narrated above, the costs of carrying out the exercise payable to the NCSCM shall be borne by the Hotel. The State will have to immediately send the proposal to the NCSCM. The NCSCM has already indicated that it will require about 120 days to carry out the exercise. Since the proposal was already moved by the GCZMA earlier and the NCSCM had shown its willingness, there should not be any impediment for the NCSCM to carry out the exercise as indicated in the decision of the Division Bench dated 29 June 2015.

92. As regards the directions of the access to the beach in question, they have already been given by the Division Bench and, therefore, they must be complied with.

93. In view of the above discussions, we dispose of the Writ Petition by following directions :

(I) The impugned decision of the GCZMA in the meeting dated 1 August 2017 accepting the Second Report and the Second Report filed by the GCZMA, are quashed and set aside;

(II) (a) The Authorities shall, within three weeks from today, approach the National Centre for Sustainable Coastal Management, Chennai in respect of the paragraphs 37(i) of the Judgment and Order dated 29 June 2015 in Writ Petition No.333 of 1993;

(b) The NCSCM is requested to submit an estimate of costs to the Authorities within a period of three weeks from the date of receipt of the proposal from the Authorities

(c) After the estimate of costs is received from the NCSCM, the Authorities will forthwith call upon the Respondent No.3-Hotel to make payment of costs estimated by the NCSCM, directly to the NCSCM, within a period of three weeks.

(d) The NCSCM will carry out the exercise as indicated

in paragraph 37(i) of the Judgment and Order dated 29 June 2015, within in a period of four months thereafter and prepare a report.

(e) It is open for the NCSCM to proceed to carry out the exercise without waiting for the tender of costs by the Respondent No.3-Hotel.

(f) After the exercise is so completed by the NCSCM, the Authorities, based on such conclusions arrived at by the NCSCM will take necessary action against the Respondent No.3-Hotel in respect of an area which is found to be in violation of the CRZ Notification of 1991, within a period of four weeks.

(g) The Authorities and the Respondent No.3 Hotel shall supply all the necessary documents and information to the NCSCM as and when required for the purpose of carrying out the exercise.

(h) Any violation of the above directions both, by the Authorities and the Respondent No.3-Hotel, will be viewed seriously and will be treated as a contempt of the order of this Court.

(i)The above directions shall be read along with the observations made by us in this Judgment.

(III) The Respondents-Authorities shall take necessary steps forthwith to ensure that the beach in question is made accessible to

the general public.

94. The Registry is directed to send a copy of this Judgment to the NCSCM forthwith for information. Liberty is granted to NCSCM to approach this Court if it needs any clarification.

95. Rule is made absolute in the above terms.

96. Though we have disposed of the Petition, it shall be placed on board under the caption 'For Directions' after a period of six months from today only for the purpose of reporting compliance.

Prithviraj K. Chavan, J. ***N.M. Jamdar, J.***

97. At this stage, the learned Counsel for the Respondent No.3 seeks stay of the implementation of this Order. Considering the facts and circumstances, we are not inclined to stay the operation of Clause (I) and Clause (III) of the Order. However, the directions issued in Clause (II) in respect of carrying out the exercise shall come into force after the period of eight weeks from today.

Prithviraj K. Chavan, J. ***N.M. Jamdar, J.***

TRUE COPY

SLP(C) 33743/2018

ITEM NO.14 COURT NO.1 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No.33743/2018

(Arising out of impugned final judgment and order dated 24-08-2018 in PILWP No. 26/2017 passed by the High Court of Judicature at Bombay at Goa)

VMSALGAOCAR CORPORATION PVT. LTD. Petitioner(s)

VERSUS

739463

THE GOA FOUNDATION & ORS. Respondent(s)

(For interim relief)

Date : 11-01-2019 This petition was called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

Certified to be true copy
Assistant Registrar (Judl.)
12.2.19 20
SUPREME COURT OF INDIA

For Petitioner(s) Mr. Shyam Divan, Sr. Adv.
Mr. Chander Uday Singh, Sr. Adv.
Mr. Pratap Venugopal, Adv.
Mr. Devidas Pangam, Adv.
Ms. Surekha Raman, AOR
Ms. Remya Raj, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

Heard learned counsel for the petitioner and perused the relevant material.

We are not inclined to interfere with the order impugned in the special leave petition. The same is, accordingly, dismissed.

Signature valid
Digitally signed by CHETAN KUMAR
Date: 2019.01.11 17:14:08 IST
Reason:

As the High Court has merely sought a report from the National Centre for Sustainable Coastal Management with regard to the High Tide Line, we do not see how the said direction of the High Court could have prejudiced the petitioner, inasmuch as it will always be open to the petitioner to urge its defence and take all points before the said authority at the time of consideration of the matter.

(Chetan Kumar)
A.R.-cum-P.S.

(Anand Prakash)
Court Master

ANNEXURE P-6

PANCHANAMA

The undersigned surveyors based on the order issued by the Member Secretary, GCZMA bearing No.GCZMA/WP.No.333/1993/17/2058 dt.02/01/2020 visited the suit site located at Miramar & based on the location map prepared by the NCSCM, Chennai & also based on the decision of the GCZMA in its 218th meeting held on 18/12/2019 carried out the inspection & identified the area of the offending structure which is held to be within NDZ.

1) Retaining wall: The retaining wall runs parallel to the west coast in North south direction which is 206.00mts in length having also a breadth of 0.60 mts. The said retaining wall which is within NDZ that has been identified to be offending is highlighted in **Red** paint on its extreme north-western side & also on the south-western side.

2) The compound wall: The part of the compound wall which is partly located in the NDZ area lies near to the road leading to the beach which road is next to the playground of Youth Hostel. The length of the compound wall to be demolished is 13.00 mts & the portion of this wall which is located in NDZ is marked in **Red** paint for identification.

3) Swimming pool: Part of the swimming pool which is required to be demolished is highlighted on its edges with **Red** paint. Towards the south western side, the breadth of the swimming pool is 3.00 mts & towards the North western side it has a breadth of 5-0 mts & the length of the entire swimming pool is 45.0 mts.

4) Hut: The round hut which is partly located in NDZ has been identified in **Red** paint which is touching the swimming pool & the oval portion to be demolished is highlighted in **Red** paint & the approximate area that needs to be demolished is 35.00sq.mts.

The site inspection for the purpose of proper identification of the structures to be demolished was carried out in the presence of:

1. R. Soares, Representatives of Owners of Goa Marriot. [SD]
2. N.G. Bene, Representatives of Owners of Goa Marriot. [SD]
3. Shanker Malkarnekar, Representatives of Owners of Goa Marriot. [SD]
4. Mahabaleshwar M. Kinalkar, Representatives of Owners of Goa Marriot. [SD]

Correctness of recording is not admitted at this stage. We object to marking of part compound wall as it is not part of structure found to be in violation as per NCSCM Report

And their signatures have been obtained against their names.

This inspection commenced at 3.30 pm hours & it got over at 4.50pm hours.

Place: Miramar, Goa

Date: 03/02/2020

(Sd/-)	(Sd/-)
Devendra Gaonkar	Yashwant Bicholkar
Field Surveyor	Field Surveyor
GCZMA	GCZMA

///TRUE COPY///

ANNEXURE P-7

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO. 2 OF 2020

in

PILWP No.26/2017

The Goa Foundation
through its Secretary, Dr. Claude Alvares,
Having Regd. Office at
Room No 7, Above Mapusa Clinic,
Mapusa, Goa 403 507
Email id:
goafoundation@gmail.com ……Petitioner

V/s

1. Shri Parimal Rai,
Office of the Chief Secretary,
Secretariat, Porvorim, Goa.

2. Shri Puneet Kumar Goel
Secretary, Environment,
c/o Secretariat, Porvorim, Goa.

3. Shri Johnson Bedy Fernandes,
Member Secretary, GCZMA,
With address at 1st Floor, B-Wing,
Pandit Deendayal Upadhyay Bhavan,
Pundalik Nagar, Alto-Porvorim, Bardez
Goa – 403 521 ….Respondents

(Above addresses are registered addresses of parties)

To,

The Hon'ble Chief Justice and Companion Judges,

Bombay High Court at Panaji, Goa

THIS HUMBLE PETITION OF THE PETITIONER
MOST RESPECTFULLY SHOWS

CONTEMPT PETITION UNDER ARTICLE 215 OF THE CONSTITUTION OF INDIA

1. This contempt petition concerns implementation of directions issued by this Hon'ble Court in its judgement dated 24.8.2018 in PIL WP No.26/2017, which essentially enforces directions issued in judgement dated 29.6.2015 in Writ Petition No.333/1993.

2. The matter in both petitions concerns demolition of constructions raised by the Hotel Marriott (Palm Hotels originally) in violation of the CRZ notification on the Gaspar Dias beach of Panaji, and restoration of the beach to the public.

3. This contempt petition is being filed against the Resp. Nos. 1-3 for wilful and conscious disobedience of the directions given by this Hon'ble Court in its judgment dated 24.8.2018. The main directions are as follows:

> "93 (II)) (f) After the exercise [of demarcation of HTL] is so completed by the NCSCM, the Authorities, based on such conclusions arrived at by the NCSCM, will take necessary action against the Respondent No.3 - Hotel in respect of an area which is found to be in violation of the CRZ Notification of 1991, within a period of four weeks."
>
> "(III) The Respondents -Authorities shall take necessary steps forthwith to ensure that the beach in question is made accessible to the general public."

A full copy of the judgement dated 24.8.2018 is at **Annexure A**.

4. As per records, the NCSCM report referred to in the above judgement, accompanied with map drawn to scale with adequate indication of the CRZ area, was handed over to the Goa government on 22.8.2019. A copy of the report is **Annexure B** to this petition.

5. Four weeks from the date of the receipt of the report is 21.9.2019. Compliance was to be filed by the said date. On 19.9.2019, in order to protect the resort, the GCZMA issued a show cause notice under section 5 of the EPA to the resort owners.

6. On 20.9.2019, this Hon'ble Court, on being informed that a show cause notice had been issued, but without the benefit of either being allowed to see the report, or hear the petitioner (who also was not provided with a copy of the report), directed that the main petition (No.26/2017) be listed for compliance and stood over the matter to 15.11.2019.

7. On 15.11.2019, on being informed that the GCZMA had been reconstituted, the government made another request for the matter to be adjourned for the new GCZMA to consider the matter. Accordingly, the matter was listed for full compliance by 10.1.2020.

8. Petitioner visited the site of the offending constructions on the seaward side of the resort hotel on 14.1.2020 and confirmed that no action as required by the directions of this Hon'ble Court and the conclusions of the NCSCM had been carried out. As a result of non-compliance:

    a) The first direction stands absolutely violated;

    b) The second direction is also violated since part of the public beach still remains within the offending wall of the

resort and therefore out of reach of the general public. The 2015 judgement (at para 32) in fact records that the offending structures towards the riverside of the imaginary line are to be eliminated because "it would deprive the citizens of Panaji from moving into the picturesque Miramar beach adjoining the subject hotel project." Moreover, the access from the road adjoining the hotel building to the beach is still not made easily accessible.

9. As per its judgement dated 24.8.2019, this Hon'ble Court had also directed as follows, if its order was not implemented.

> "93 (2)(h) Any violation of the above directions both, by the Authorities and the Respondent No.3 - Hotel, will be viewed seriously and will be treated as a contempt of the order of this Court."

10. The petitioner on 2nd November 2019 wrote a detailed letter to Parimal Rai, Chief Secretary, explaining the facts of the case and serving notice that if no action was taken by him before 15th November, 2020 it would have little option but to file a

Contempt Petition against him in terms of para (h) of the said judgment.

11. In the humble submission of the writ petitioner, as the NCSCM reports remains unimplemented, contempt has now taken place. Hence, this contempt petition.

Facts of the matter in brief:

12. The petitioner (Goa Foundation) had filed a writ petition challenging the approvals granted for construction of Palm Hotels (later Goa Marriott) in 1993. The petition was allowed by judgment of the Bombay High Court on 29.6.2015, after a period of 22 years. The Court found that the approvals granted were in violation of the CRZ Notification and allowed the petition. All contentions raised by the Respondent hotel were rejected.

13. The Court, conscious that the hotel was located in the CRZ II area of Panaji city, passed an order as follows:

“O R D E R”

“The respondent nos. 1 to 4 or any other designated competent authority shall proceed to examine whether any of the construction activities carried out by the respondent no.7 comes towards the river side of the imaginary line to be drawn from the Light House shown in the plan of the Court Commissioner parallel to the High Tide Line in the manner as stated herein above and thereafter proceed to take necessary action against the respondent no.7 for restoring such area in accordance with law within six months from today.

“The respondent no.2 shall take all measures to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of the respondent nos.7 and 9.

“The respondent nos.7 and 9 shall not obstruct the access of the public to the subject beach through the said reserved path and the respondent no.2 shall take all measures to make such path accessible to the said beach in accordance with law.”

14. As the order was not appealed, it became final. Petitioners crave leave to produce and rely upon the judgement dated 29.6.2015,

as and when required in these proceedings. The order had granted 6 months time for execution, if any. This means the order had to be carried out by 29.12.2015.

15. The scandalous collusion between the hotel owners and the Government of Goa was highlighted in the said judgement without mincing any words. Shameless to relate – and in order not to comply with the judgement – the officials of the Goa government now set in motion a project to ensure that the Marriott would not have to go for any demolition even if this meant that the orders of a constitutional court would thus be disrespected and disobeyed.

16. In March 2016, the GCZMA first produced a report of compliance, bypassing the office of the Chief Secretary. It transpired that the authorities had ganged together to frustrate the carrying out of this High Court's order and had submitted a compliance report which showed/located the HTL in the river (and not on land, as required by the CRZ notification). The report claimed that therefore no constructions needed to be demolished.

17. The Goa Foundation moved an application in WP 333/1993 for challenging the report. It was rightly set aside by the Hon'ble High Court by a detailed order dated 24.10.2016. Petitioner craves leave to produce the said order, if and when required in these proceedings.

18. Thereafter, the GCZMA prepared a second report, but only after a contempt petition had been filed by the petitioner. This time as well, the same cabal of officers brazenly plotted to ensure that the interests of the hotel would continue to be protected and succeeded in the manufacture of a second report which again cast the HTL in the river. Naturally, the second report also came to the conclusion that no demolition was required!

19. Pursuant to this, the petitioner had no recourse but to file a fresh PIL writ petition No.26/2017 challenging the second report. The second report, filed on 1.8.2017, was set aside by a detailed judgment of the High Court dated 24.8.2018. The observations of this Hon'ble Court in respect of the conduct of the GCZMA are given in paras 81, 89 and 91 of the judgement (Annexure A). The Court held:

"The Division Bench has already noted [in the judgement dated 29.06.2015] that the Authorities have made attempts to somehow protect the Hotel. The Bench considered the very same argument and attributed legal malice to the Authorities of the State. The same conduct and intent constituting legal malice has continued by the GCZMA. It was expected that at least after the Division Bench made the observations, the Respondents-Authorities would act within the bounds of law and to carry out the exercise as directed. The manner in which the two reports are prepared clearly indicates that the Authorities have made up their mind not to draw the correct High Tide Line as existed in the year 1991 within the parameters of the Coastal Regulation Zone Notification." (para 81)

"However, the Respondent-Authorities cannot be entrusted this task any further. We have to entrust the task to a competent official outside agency." (para 89)

"As we have stated earlier, we are not prepared to entrust the task of identifying the High Tide Line with the

Respondents-Authorities any further. The task, therefore, will have to be entrusted to the NCSCM." (para 91)

20. The Respondent resort attempted to challenge the judgement of the Bombay High Court dated 24.8.2018 in the Supreme Court. This challenge was dismissed by the SC by its order dated 11.01.2019. Copy of the order dismissing the appeal is at **Annexure C**.

21. The NCSCM report (the third report) took more than a year to be finalised at a cost of Rs.11 lakhs. Though the judgement requiring the NCSCM report was passed on 24.8.2018, the NCSCM report was eventually submitted on 22.8.2019. Interestingly, the report was despatched by the NCSCM only to the Government and the private hotel respondent, but not to the petitioner.

22. Unbeknownst to the petitioner, the GCZMA, again in collusion, decided for a third time to frustrate the orders of this Hon'ble Court. It refused to take any action pursuant to the NCSCM report. As stated earlier, the NCSCM report was handed over to the GCZMA on 22.8.2019. Astonishingly, the Report is supposed to have been considered by the GCZMA at its 211st

meeting held on 24.8.2019 (within 2 days). The minutes of the meeting record: “The disputing parties have been constantly fighting on the aspect of delineation of the H.T.L. and the offending structures within the NDZ which needs to be decided as to whether it needs to be retained or not. Since the much awaited report of NCSCM has been received it is but appropriate to issue notices to both the parties by giving a copy of the NCSCM report and thereafter hear them so as to take appropriate decision in the matter. The authority hence resolved to issue show cause cum hearing notice to the parties concerned,”

23. It can be seen from a plain reading of the extracted decision of the GCZMA that it is in contempt of this Hon’ble Court’s directions. The issue was no longer any dispute between parties. The matter was fairly simple: the NCSCM report being available, with a clear map drawn to scale, the actions as directed by the Court had to be followed in respect of the constructions found in the NDZ as shown. By introducing a dispute, the GCZMA was attempting to take the matter back to 1993, despite two judgements of this Hon’ble Court settling all issues, that too, in favour of the petitioner.

24. It should also be noted that the show cause notice is issued to the owners of the resort on 19/9/2019, exactly when the period of 4 weeks pursuant to receipt of the report was getting over. Issue of a copy of the NCSCM report to the hotel owners was a pretense, since it is was officially communicated to them by the NCSCM itself on 21.8.2019, as the NCSCM letter itself shows.

25. On 20.9.2019, the High Court was told a show cause notice had been issued to the parties. This was factually wrong, since no notice was issued to the petitioner. Only a copy of the show cause notice sent to the hotel owners was sent to the petitioner. Copy of the show cause notice issued under the EPA is at **Annexure D**.

26. At this stage, the NCSCM report was still not presented in the High Court and without it, neither the petitioner nor this High Court knew the contents of the report or what was happening. In good faith, the Hon'ble High Court posted the matter to 15.11.2019. Thereafter this Hon'ble High Court received a copy of the report. However, on 15.11.2019, this Court was again informed that more time was required as the GCZMA had now been reconstituted and the new GCZMA would consider the

matter at its next meeting. The Court accordingly placed the matter for full compliance on 10.1.2020. None of the extensions were based on any factual or true information being made available either to the Court or the petitioner.

27. The petitioner refused to attend/participate in the meeting of the GCZMA held pursuant to the show cause notice dated 19.09.2019, as it was its conviction that the GCZMA was not the authority in the matter any longer. The petitioner thereafter appeared before the GCZMA pursuant to a "Notice for Personal Hearing" dated 11.12.2019, copy of which is at **Annexure E**. The petitioner attended the hearing only to submit a written communication that the GCZMA ought not to meddle with this matter, since the Hon'ble Court had already expressed total lack of confidence in the body as far as this specific issue was concerned and this is the reason why this Hon'ble Court had entrusted the matter to the NCSCM, a body outside the State of Goa. It refused to participate in the GCZMA proceedings on the grounds that these proceedings were unwarranted and were nothing more than obstruction of justice. Copy of the letter submitted by the petitioner to the GCZMA is at **Annexure F**.

28. The pattern is clearly established in the conduct of the GCZMA in filing the first report and then filing the second report and then obstructing the implementation of the third report by ensuring further delays in implementation of this Court's directions.

29. Conscious of the collusion between the lower officials and the hotel owners, this Court, in fact, had earlier passed an explicit order dated 3.7.2017 which stated: "Needless to say, the Chief Secretary and Secretary of the Concerned Department to ensure that such directions are complied with within the time granted, after giving a notice of inspection to the petitioner/concerned parties in terms of the earlier order." Copy of the order – which was passed on an application filed by the GCZMA for seeking one more extension of time to comply – is at **Annexure G**.

30. The Goa Foundation therefore served notice on 2.11.2019 on Parimal Rai, present Chief Secretary, that if no action is taken by the authorities before the 15th November 2019 on the findings of the NCSCM report, it would have little option but to proceed to file a contempt petition against him in terms of para 93 (h) of the said judgment. Copy of the notice dated 2.11.2019 is at **Annexure H**.

31. Shri Parimal Rai and Shri Puneet Kumar Goel are joined as Respondents Nos.1 and 2 in view of the order dated 3.7.2017. Additionally, the Chief Secretary was also a party respondent in both writ petitions. The Principal Secretary, Environment, is also the Chairperson of the GCZMA. Johnson Bedy Fernandes is member secretary of the GCZMA during the period the NCSCM report was submitted and thereafter. He has therefore taken an active role within the GCZMA to frustrate the implementation of the order of this Court. The facts in this regard are set out below:

    a) Immediately after receipt of the NCSCM report, the GCZMA held a meeting and decided to issue a section 5 notice. This notice was soon forgotten. The show cause notice was issued one day prior to expiry of the period of four weeks from receipt of the NCSCM report, simply to favour the respondent hotel.

    b) The show cause notice or order under section 5 of the EPA explicitly recorded decisions that flew in the face of the directions issued by this Hon’ble Court. Such brazen conduct needs to be deprecated. It appears that some senior officers of

the Goa government will simply not be bothered with implementing orders and directions of this Hon'ble Court.

c) The GCZMA went on to ensure that the decision to demolish would now be smothered under a fresh phase of objections made by the resort owners. The minutes of the GCZMA meeting held on 3.10.2019 in fact again tried to show decisions as being taken after hearing [both] the parties including the petitioner. This was done despite the petitioner boycotting the first meeting entirely. The petitioner objected strenuously to such misrepresentation in writing.

d) More amazing conduct was yet to emanate from the GCZMA. On 31.12.2019, the Respondent No.3 wrote a letter to the Land Survey Department was directed to point out the offending structures for demolition on the property. However, on the same day, the Resp.No.3 also wrote to the Water Resources Department, in fact practically inviting the Department to raise objections to the demolition of the retaining wall on the grounds of implementing the second direction given by the Hon'ble High Court in its first judgement passed on 29.6.2015 in writ petition No.333/1993

more than 4 years earlier! Copies of the two letters dated 31.12.2019 are at **Annexure I colly.**

e) The petitioner has named only the member secretary of the GCZMA for purpose of contempt. This is mainly because all actions in this matter were initiated by him. In fact, the manner in which this statutory body functions is revealing. The minutes of the GCZMA are never signed by members. No minutes are ever approved by the GCZMA at subsequent meetings – a standard practice followed by even the smallest of organisations. All minutes are based not on decisions taken in the meeting of the authority, but subsequently by the member secretary. Persons who are not nominated to attend the meetings, attend them. Till recently, an OSD assigned to the GCZMA was found conducting the meetings till petitioner objected. As the minutes have not been approved by members, their veracity and legality is completely in doubt.

Grounds:

32. The petitioner is therefore approaching this Hon'ble Court under its contempt jurisdiction on the following grounds among others.

A. The original directions given in the original judgment dated 29.6.2015 required action to be taken within a period of six months. This is after 22 years of the petition being filed and being heard by this Hon'ble High Court. After 6 months there was still no compliance with the directions of this Hon'ble Court by any of the authorities. The petitioner therefore filed an applications to draw the attention of this Hon'ble Court to the matter, and even filed an earlier contempt petition.

B. The authorities ganged up together to frustrate the carrying out of this High Court's order and manipulated and submitted a compliance report (the first report) which showed/located the HTL in the river (and not on land, as required by the CRZ notification). This was challenged by the petitioner and the court, indicating its displeasure, set aside the report and directed a fresh report to be done.

C. A second time, the same cabal of officers brazenly plotted to ensure that the interest of the hotel would continue to be protected and succeeded in manufacturing another report (the second report) which again cast the HTL in the river. Naturally, the second report also came to the conclusion that no demolition was required.

D. The Court set aside the second report and directed the NCSCM to demarcate the HTL in terms of the original order of this High Court in W.P. No. 333/1993, but not before another year had passed.

E. No action was taken pursuant to NCSCM report. Instead the GCZMA now issued a show cause notice to the respondents inviting them to object. The opportunity was quickly seized and the hotel owners filed two detailed representations and were preparing for more.

F. The pattern of obstruction is clearly established in the conduct of the GCZMA in filing the first report and then filing the second report and then obstructing the

implementation of the third report by ensuring further delays in implementation of this Court's directions.

G. The Resp. Nos. 1&2 were directed and duty bound to implement the directions of this Hon'ble Court as head of the administration and the environment department respectively. The office of the Resp.No.1was a respondent in the first writ petition and the subsequent writ petition. For reasons best known to him, the present incumbent has decided that he and his administration will not comply with the orders of this Hon'ble Court. Petitioner has therefore no other option but to move this contempt petition since contempt has occurred in more than abundant fashion as shown in the facts related in the petition.

Reliefs:

33. Petitioner is therefore praying for the following reliefs, in public interest:

a) For an order citing Resp.Nos.1-3 for being in contempt of this Hon'ble High Court;

b) Any other reliefs this Hon'ble Court may be pleased to grant.

For the above, petitioner would be forever grateful.

Place: Panaji-Goa.
Date: 15.01.2020 Petitioner

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO. 2 OF 2020

in

PILWP No.26/2017

AFFIDAVIT

I, Dr. Claude Alvares, Secretary, Goa Foundation, Petitioner herein, do hereby solemnly affirm and declare as under:-

1. I have today filed a Contempt Petition in PILWP 26/2017 for the reliefs sought therein.

2. I solemnly declare and say that what has been stated in paras 1, 2, 3(p), 4-7, 8(p), 9-10, 11(p), 12-14, 15(p), 16(p), 17, 18(p), 19-21, 22(p), 24(p), 25(p), 26(p), 27(p), 28(p), 29(p), 30 and 31(p) of the accompanying petition are in the nature of facts which are true to my own knowledge and the contents of paras 3(p), 8(p), 11(p), 15(p), 16(p), 17 18(p), 22(p), 23, 24(p), 25(p), 26(p), 27(p), 28(p), 29(p), 31(p), 32 and33 are my submissions, made on legal advice which I believe to be true and correct. No part of it is false and nothing material has been concealed therefrom.

3. I say that the documents annexed are true copies of their originals.

Solemnly affirmed at Panaji
this the 15 day of January 2020 Deponent

///TRUE COPY///

ANNEXURE P-8

GOA COASTAL ZONE MANAGEMENT AUTHORITY

C/o Department of Environment and Climate Change (Govt. of Goa)
4th Floor, Dempo Towers
Patto, Panaji Goa 403001
Email: goacoastal zone@gmail.com

Ref.No. GCZMA/ Writ Petition no.333/1993/17/3030 **Dated: 11/03/2020**
16

ORDER

Sub: Order pertaining to retaining wall in property Hotel Goa Marriott Resort c/o V.M Salgaocar Corporation Pvt Ltd, Salgaocar Centre, E 4, Murgaon Estate, Off Airport Road, Chicalim, Goa

Ref.: (1) Judgment/order dated 29/06/2015 in Writ Petition No. 333 of 1993 passed by the Hon'ble High Court of Bombay at Goa.
(2) Judgement dated 24/08/2018 in PIL WP no.26/2017passed by the Hon'ble High Court of Bombay at Goa.
(3) NCSCM report.
(4) Minutes of 211st GCZMA meeting held on 24/08/2019.
(5) show cause cum hearing notice bearing no.GCZMA/ Writ Petition no.333/1993/17/1509 dated 19/09/2019.
(6) letters dated 27/09/2019 and 01/10/2019 received from respondent.
(7) Corrigendum dated 03/10/2019 bearing no. 333/1993/17/1546 was issued by the authority to its show cause notice dated 19/09/2019.
(8) Minutes of 214th GCZMA meeting held on 03/10/2019.
(9) Minutes of 218th GCZMA meeting held on 18/12/2019.
(10) Panchanama submitted by Field Surveyors of GCZMA.
(11) Minutes of 219thGCZMA meeting held on 28/01/2020 and 29/01/2020.
(12) Demolition Order dated 30/01/2020 issued by GCZMA.
(13) Minutes 223rd GCZMA meeting held on 18/03/2020.
(14) Report dated 16/09/2020 submitted by CWPRS
(15) Minutes 234th GCZMA meeting hled on 05/11/2020.
(16) Minutes 238th GCZMA meeting held on 26/11/2020.
(17) Minutes of 239th GCZMA meeting held on 10/12/2020.
(18) Minutes of 243rd GCZMA meeting held on 14/01/2021
(19) Minutes of 245th GCZMA meeting held on 28/01/2021.
(20) Minutes of 249th GCZMA meeting held on 18/02/2021.

WHEREAS, earlier Goa Foundation filed a Writ Petition No. 333 of 1993 before the Hon'ble High Court of Bombay at Goa interalia alleging that Goa Marriot Resort had breached the CRZ Notification. The said matter was disposed of by the Hon'ble High Court vide judgment/order dated 29/06/2015. The Hon'ble High Court of Bombay at Goa vide judgment/order dated 29/06/2015 had interalia directed the authorities to draw a line parallel to the High Tide Line from the Light House, a structure nearby. The authorities were to determine whether any construction of the said resort falls towards

the river side of this line and thereafter to take necessary action against the said resort. The said order also directed to take all measures to prevent the erosion of the sand bank and the siltation of the river. The said resort was further directed to remove the obstructions on the access for the public to go to the beach.

AND WHEREAS, another PIL WP No.26/2017 was also filed by Goa Foundation interalia being aggrieved by the report of the GCZMA marking the CRZ II NDZ area infront of the Marriot resort in respect of compliance of judgment dated 29/06/2015 passed in WP No.333/93. The Hon'ble High Court of Bombay at Goa vide judgement dated 24/08/2018 issued various directions contained in Para.93 I to III to this authority.

AND WHEREAS, the NCSCM was required to carry out the exercise in terms of paragraphs 37 (i) of the Judgement and order dated 29/06/2015 in Writ Petition bearing No.333/1993 by the Hon'ble High Court of Bombay at Goa. Further, NCSCM was requested to submit an estimate of costs to this office within a period of three weeks from the date of receipt of the proposal. As per the directions of the Hon'ble High Court, NCSCM is required to carry out the exercise as indicated in paragraph 37(i) of the Judgment and Order dated 29 June 2015, within a period of four months thereafter and prepare a report. The expenses for the entire exercise will borne out by the concerned resort.

AND WHEREAS, the NCSCM has submitted a report to this authority. The report has recorded observation interalia depicting violation of CRZ violation by Hotel Goa Marriott resort.

AND WHEREAS, the said report submitted by NCSCM was placed for discussion and deliberation in the 211th GCZMA meeting held on 24/08/2019. In the said meeting held on 211st GCZMA meeting held on 24/08/2019, it was decided as follows *"The disputing parties have been constantly fighting on the aspect of delineation of the H.T.L and the offending structures within the NDZ which needs to be decided as to whether it needs to be retained or not. Since the much awaited report of NCSCM has been received it is but appropriate to issue notices to both the parties by giving a copy of the NCSCM report and thereafter hear them so as to take appropriate decision in the matter. The authority hence resolved to issue show cause cum hearing notice to the parties concerned.*

AND WHEREAS, accordingly a show cause notice cum personal hearing notice bearing No.GCZMA/ Writ Petition no.333/1993/17/1509 dated 19/09/2019was issued by this authority.

AND WHEREAS, the authority was further is receipt of various letters dated 27/09/2019 and 01/10/2019 from respondent seeking clarification on the show cause notice issued by authority. Accordingly a Corrigendum dated 03/10/2019 bearing no. 333/1993/17/1546 was issued by the authority to its show cause notice dated 19/09/2019.

AND WHEREAS, the matter was placed in the 214th GCZMA meeting held on 03/10/2019 for grant of personal hearing. In the 214th GCZMA meeting held on 03/10/2019 after hearing the parties it was decided as follows *"The Authority had received an application seeking for clarification in respect of the structures which were required to be demolished. The respondent wanted to know as to whether the entire swimming pool, the entire hut and the entire walkway should be demolished or only a part of it because the notice as received by them was vague and silent. The Authority immediately clarified by giving a letter amending the structures which were required to be demolished based on the NCSCM report. The clarification letter was specifying the nature of violation to be that as part demolitions and not in it's entirety. The respondent thereafter sought for the time to give their say/reply based on the clarifications given by the Authority. The Authority decided to give them time and also decided to issue fresh notice to both the complainant and respondent".*

AND WHEREAS, the matter was placed in the 218th GCZMA meeting held on 18/12/2019 for grant of personal hearing. The proceedings in the said matter held in the 218th GCZMA meeting held on 18/12/2019 was as follows *"The Hon'ble High Court of Bombay at Goa in PIL WP. 26/17 vide Order passed on 15/11/2019 has directed the Authority to take action within a period of 4 weeks & place on record the Action Taken Report. The Respondent in reply to the Show Cause Notice & the subsequent corrigendum issued by the Authority in terms of the clarifications sought by the Respondent has argued to say that merely by perusing the plan prepared by the NCSCM the precise portion of the swimming pool, the hut & the retaining wall which needs to be demolished is not spelt out. He stated that the length & the breadth needs to be clarified by delineating the same on loco. He thereafter pointed out to the order of the High Court passed on 29/06/2015 in WP No.333/93 wherein it has categorically mentioned that all measures to prevent the erosion of the bank & siltation of river Mandovi along the concerned land of the Respondents should also be taken & in the event if the retaining wall is demolished the chances of the entire land getting washed off by posing danger to*

the hotel premises itself cannot be ruled out. He stated that the Respondent is in no way undermining the orders passed by the Court of law but all what it seeks is to ensure that the demolition is done in accordance with the fulfilment of the desires of this Authority because, either way if he does the same & if it is not in accordance with the wants of the Authority & of the complainant, then unnecessarily he would end up in re-demolishing the structures or in the alternative demolish more than the extent of what was required. He hence prayed that proper delineation be done on loco so that he may undertake the demolition in accordance with the directives of the court.

The complainant Dr. Claude Alvares was present in person who stated that there was no reason for the Authority to issue a Show Cause Notice de novo because all what the directives of the Hon'ble High Court of Bombay at Goa had envisaged is that the Authority should act upon receipt of the report prepared by the NCSCM & execute the orders. He pointed out that in the past because the Authority was dragging its feet, the Court had gone to the extent of passing strictures on the Authority & he charged that now too the Authority by issuing a Show Cause Notice is repeating the same because it doesn't want to act upon the report prepared by the NCSCM. He emphasized that the order of the court is on the Authority to act & demolish & not on the Hotel owner & hence he insisted that the executive machinery be put into action & ensure demolition of the offending structures. After voicing out the objections the Petitioner left the proceedings without waiting for the counter arguments to be heard that were advanced by the Respondent.

Ld. Sr. Adv. Nitin Sardessai thereafter placed before the Authority the order passed by the Hon'ble High Court dt.26/09/2019 whereby the Authority had submitted that the report prepared by the NCSCM would be placed for the meeting of the Authority to take a conscientious decision. He stated that the complainant would have objection to such a step sought to be adopted by the Authority during the hearing before the Hon'ble High Court. Secondly he stated that it has been the uniform principle of practice which is in the nature of law that the owner of the offending structure should initiate steps to demolish the same on his own & only if he fails to act than the administration steps in & the costs involved for demolition are recoverable as arrears of land revenue. He again pointed out to another order passed by the Hon'ble Court on 15/11/2019 which wasn't objected to by the complainant & if that be the case than the question of agitating before this Authority does not arise. He hence prayed that the clarification sought be given to him in writing so that if he isn't satisfied than it would provide him a vent to approach the appropriate forum."

AND WHEREAS, in the 218th GCZMA meeting held on 18/12/2019 after hearing the parties it was decided as follows "*The Authority observed that the current*

proceedings have been languishing for decades & that it somehow has to meet its fate which has been sealed based on the report prepared by the NCSCM. The arguments of the complainant that no further hearing was required to be given to the Respondent does not auger well because the present hearing is not based on merits of the case but on the point of demolition of the offending structures & the extent of demolition. If this wasn't done then it would give scope to the Respondent to knock the doors of the Court so as to obtain a stay on the execution citing principles of natural justice being flouted. The Authority has taken on record the statement made across the members by ld. Sr. Adv. N. Sardessai that the Respondent is willing to undertake the demolition on his own provided that the same is properly delineated on loco. For this purpose the Authority directs the Officials of the Directorate of Settlement & Land Records to conduct a physical inspection & mark on site with paint the exact portion of the offending structure that is required to be demolished. This exercise has to be completed before the end of 10th January 2020.

Simultaneously the Authority also decided to call for a report from the WRD about the demolition of the retaining wall which acts as a barrier for soil erosion & if in the event it is demolished than what steps would be taken by them to prevent soil erosion including the time required for this purpose."

AND WHEREAS, accordingly interms of decision taken in the 218th GCZMA meeting held on 18/12/2019, letters dated 31/12/2019 were issued to office of Chief Engineer, WRD and Director, Directorate of Settlement and land Records.

AND WHEREAS, interms of decision taken in the 218th GCZMA meeting held on 18/12/2019 a site inspection/demarcation was carried out by GCZMA through their field surveyors on 03/01/2020. The said field surveyors carried out the said demarcation and submitted a panchanama. The said panchanama is clearly points out the length and breadth and the dimensions of each of the offending structure comprising of part of the swimming pool, part of the hut next to swimming pool and part of the retaining wall.The copy of the said panchanama is annexed hereto and marked as **Annexure "A"**

AND WHEREAS, the parties were called for personal hearing on **28 /01 /2020** to give their say if any on the said panchanama report. On 28/01/2020 the matter was adjourned to 29/01/2020 as the counsel for respondent pleading for time on account of lack of time to prepare their reply on the panchanama report prepared on 03/01/2020 but the authority deemed it fit to give him time the very next day i.e on 29/01/2020.

AND WHEREAS, the matter was heard and decided in the **219th GCZMA meeting held on 28/01/2020 and continued on29/01/2020.** The proceedings in the matter during abovementioned meetings are reproduced: *"The Counsel of the Respondent was present and he submitted that the notice issued by the Authority has been received only on 24/01/2020 which was a Friday and the hearing is scheduled on 28.1.2020. He submitted that the timelines are too short to file a detailed reply because they wanted to place on record the technical report of an Engineer which would enable the authority to know and understand that in case the demolition does take place, the possibility of the entire hotel premises getting demolished on its own due to erosion of the sandy soil cannot be ruled out. The Respondent was persistently pleading to give him time of two weeks to file reply so that the authority can take a conscious decision."*

AND WHEREAS, in the **219thGCZMA meeting held on on 28/01/2020 and continued on 29/01/2020,** it was decided as follows: *"The Authority after hearing the Counsel of the Respondent was of the opinion that enough water has already flown down the years and that the question of giving any further opportunity does not arise. The NCSCM who was assigned the task to identify the offending structures which are beyond the imaginary line has clearly indicated which of the structures are beyond the NDZ. The Respondent in the past had tried to pick loopholes in the show cause notice that was first issued on 19.9.2019 for which purpose clarifications too had been immediately issued in the nature of corrigendum on 3.10.2019. Inspite of having given the clarifications the respondent desired to know the* ***nitty - gritty*** *of each of the offending structure for which purpose the field surveyor has on 3.1.2020 clearly delineated on loco as to what were the measurement of each of the offending structures.*

The retaining wall is having a length of 206 meters with breadth of 0.6 meters. The swimming pool towards the south western side is having a breadth of 3.00 meters and North west side is having a breadth of 5.0 meters with length of 45.0 meters. The oval portion of the hut next to the swimming pool is having an area of 35.00 sq.meters. Having given the clarifications even by delineating the offending structures on loco the question of giving any further opportunity to the Respondent to clarify in the matter does not arise.

The Authority was also of the considered opinion that it hasn't deviated from the dictate of the Hon'ble High Court because the Court itself has clearly pointed out that after receipt of the report from the NCSCM a hearing was required to be accorded to the Respondent.

The Authority, thus, finally decided to direct the Respondent to initially demolish the part of swimming pool and the hut next to the swimming pool on or before

12/02/2020, failing which the Collector of North Goa shall initiate steps to undertake the demolition on or before 28/02/2020 and recover costs incurred. In so far as the retaining wall is concerned the Authority decided that the same shall be deliberated only after obtaining the report from WRD."

AND WHEREAS, a demolition order bearing no. GCZMA/ Writ Petition no.333/1993/17/2297 dated 30/01/2020 was issued by authority interms of decision taken in the **219thGCZMA meeting held on 28/01/2020 and continued on 29/01/2020.**

AND WHEREAS, the matter was placed for discussion and deliberation in the 223rd meeting held on 18/03/2020. The proceedings in the said meeting can be seen as follows:- *"The Member Secretary brought to the notice of the members that the directions to demolish the offending structures were issued pertaining to part of the swimming pool & part of the hut & in so far as the retaining wall is concerned the WRD was called upon to give their findings as to whether it ought to be retained or not because the Hon'ble High Court in PIL WP. 333/1993 vide order dt. 29/06/15 itself has directed to take steps to prevent soil erosion & siltation of River Mandovi abutting the property of hotel Goa Marriot.*

The WRD had submitted a preliminary report on 12/02/2020 stating that the existing wall is able to protect the river bank from the two forces exerted by high river currents & wave impact. These two forces may cause erosion in the vicinity of the hotel area if wall is demolished. This report was also placed before the Hon'ble High Court which has called upon the WRD to give the final report. In the meanwhile the owner of the offending structure has undertaken demolition on their own of the part of the swimming pool & the hut. The WRD has also raised an invoice of Rs 10 lakhs + 18%^GST to be paid to CWPRS to complete the mathematical model study for hydrodynamics & sedimentation for assessment of soil erosion & siltation of River Mandovi. The hotelier was thereafter informed to pay the costs towards the study who has paid the same."

AND WHEREAS, in the 223rd meeting held on 18/03/2020 it was decided as follows:-*" the Authority upon being briefed about the developments decided to wait for the final report to be given by CWPRS so as to take a call in respect of the retaining wall".*

AND WHEREAS, the report dated 16/09/2020 was received from the CWPRS, Pune and the said report was placed for discussion and deliberation in the 234th GCZMA meeting held on 05/11/2020. In the said 234th GCZMA

meeting held on 05/11/2020 upon considering the said report the Authority decided to hear the matter by calling both the parties.

AND WHEREAS, the matter was placed for hearing in the **238th GCZMA meeting held on 26/11/2020.** The proceedings in the said meeting can be seen as follows:*"The Complainant is absent however there is email from the Complainant to adjourn the matter by two weeks as they need time to study the report from CWPRS Pune. Ld. Adv for the Respondent present and said he does not objection for grant of time".* In the said 238th GCZMA meeting held on 26/11/2020 it was decided to adjourned the matter and fix on 10/12/2020 at 3.30pm.

AND WHEREAS, the matter was placed for hearing in the **239th GCZMA meeting held on 10/12/2020.** The proceedings in the said meeting can be seen as follows: *"Ld. Adv. Norma Alvares for the Complainant present and argued the case and brought to the notice of this Authority that present proceedings are Contempt Proceeding before the Hon'ble High Court where compliance needs to be filed. In her arguments she stated that the Hon'ble High Court of Bombay at Goa vide order dated 29/06/2015 had issued two directions ie One to draw the imaginary line and then remove the structures within NDZ and Second to take steps to restore the beach. The GCZMA is free to take any action to demolish the compound wall coming within the NDZ. She prayed that directions be issued to the Respondent for removal of the compound wall.*

Ld. Adv for the Respondent argued that the order of the Hon'ble High Court is to demolish what comes on sea side and to take action as per law. The High Court in its order nowhere stated to demolish the compound wall. As per order the swimming pool and huts which are coming within the CRZ are demolished and the compliance to this is filed before the Hon'ble High Court. The Water Resources Department was ask to give its report and given its report. The Central Water & Power Registration Centre Station (CWPRS) Pune which is independent authority under Ministry of Jal Shakti, was asked to inspect the site and give report which is on record. As per the report of CWPs Pune the demolition of retention wall will have adverse effect on the ecology and the Bio-Diversity. That the report of CWPS Pune is not challenged before the court of law and lastly prayed that the proceedings be closed.

AND WHEREAS, in the **239th GCZMA meeting held on 10/12/2020** it was decided as follows: *"After hearing the parties at length. The Authority directed both the parties to file written arguments in the matter. The matter posted on 14/01/2021 at 3.30pm for filing of Written Arguments and clarifications if any."*

AND WHEREAS, the matter was placed for hearing in the **243rd GCZMA meeting held on 14/01/2021.** The proceedings in the said meeting can be seen as follows: *"Complainant was represented by Roshan Mathias. Ld Counsel on behalf of respondent and filed written arguments before authority and the copy of the same is given to complainant representative.*

Ld Advocate for the Respondent argued the matter stating the Hon'ble High Court had directed to take action as per law and had ordered for the demolition of retaining wall. The High Court is not the Expert and hence the issue is referred to this authority to decide as this authority had expertise. If the retaining wall is removed than greater disaster may takes place and the Hon'ble High Court does not want the same to happen and want that no further erosion takes place."

AND WHEREAS, in the **243rd GCZMA meeting held on 14/01/2021** it was decided as follows: *"Authority decided to place the matter on 28/01/2021 at 3.30pm for arguments as the Complainant is absent. The Authority also directed that this matter be listed first on 28/01/2021 hearing."*

AND WHEREAS, the matter was placed for further hearing in the **245th GCZMA meeting held on 28/01/2020.** The proceedings in the said meeting can be seen as follows: *"Complainant Adv. Claude Alvares remained present in person and brought to the notice of this Authority that we are in contempt of proceedings bearing WP No.05/2020 and this Authority without further going into the inquiry needs to pass an order for removal of the retention wall as per the directives of the Hon'ble High Court of Bombay at Goa and restore the land to its original position. Ld Adv for the Respondent present and argued stating that the Hon'ble High Court of Bombay at Goa had never spoken about the demolition of retaining wall but to take appropriate action as per law and this authority who is having experts members needs to decide the issue by taking into consideration that the ecology and environment shall not be disturbed while taking any action."*

AND WHEREAS, in the **245th GCZMA meeting held on 28/01/2020** it was decided as follows:- *"The Authority after hearing both the parties decided to call the Executive Engineer, Div - I of WRD along with the documents to ascertain the period of existence of retaining wall along the entire stretch from Miramar to Gasperdias beach . The matter is adjourned and fixed on 18/02/2021 at 3.30pm."*

AND WHEREAS, the matter was finally heard in the **249th GCZMA meeting held on 18/02/2021.** The proceedings in the said meeting can be seen as follows: "*Complainant/Petitioner absent. The Complainant had further telephonically informed the office that he does not wish to part of the proceedings today and intended to rely on written submission already filed before this authority. Ld Senior Counsel Adv N. Sardesai for the Respondent present. Shri. S. D. Patil, Chief Engineer, WRD present along with other officials from WRD. The officials of WRD made power point presentation of the site in question of Hotel Marriot and other adjoining areas and also clarified certain points raised by the Authority.*"

AND WHEREAS, the deliberation of the authority in the said meeting **249th GCZMA meeting held on 18/02/2021** can be seen as follows: "*At the 218th Meeting of the Goa Coastal Zone Management Authority (GCZMA) held on 18/12/2019 at 3.30pm, this Authority has decided to call for a Report from the WRD about the demolition of the retaining wall which acts as a barrier for soil erosion and if in the event it is demolished then what steps would be taken by them to prevent soil erosion including the time required for this purpose.*

1. *Accordingly, this Authority by its letter dated 31/12/2019 bearing Ref. No. GCZMA/W.P. No. 333/1993/17/2019 addressed a letter in this regard to the Chief Engineer, Water Resource Department, Porvorim.*

2. *This Authority by its letter dated 16/01/2020 bearing Ref. No. GCZMA/W.P. No. 333/1993/17/2203 sent a Reminder to the Chief Engineer, Water Resource Department, Porvorim.*

3. *At the 219th Meeting of the Goa Coastal Zone Management Authority (GCZMA) held on 28/01/2020 and 29/01/2020, this Authority had decided to direct the Respondent to initially demolish part of the swimming pool and part of the hut next to the swimming pool on or before 12/02/2020, failing which the Collector of North Goa shall initiate steps to undertake the demolition on or before 28/02/2020 and recover costs incurred. In so far as the retaining wall is concerned, this Authority decided that the same shall be deliberated only after obtaining the report from the WRD.*

4. *Accordingly, the GCZMA issued a Demolition Order dated 30/01/2020 directing the Hotel to demolish part of the swimming pool and part of the hut as identified*

in the Panchanama and to restore the land to its original condition on or before 13/02/2020. Further, the Deputy Collector and S.D.O, Tiswadi was directed to verify if the structures were demolished, and in the event, the same were not demolished, the Dy. Collector and S.D.O, Tiswadi was directed to demolish the same on or before 28/02/2020.

5. *In so far as the retaining wall is concerned, it was decided by the GCZMA that the same shall be deliberated only after obtaining report from the WRD.*

6. *At the 220th Meeting of the Goa Coastal Zone Management Authority (GCZMA) held on 05/02/2020 at 3.30pm, this Authority has asked the WRD to give their input to suggest means and measures to have the accessible access to the beach on account of the level difference of the land and the beach by addressing another letter to the WRD.*

7. *The Hon'ble High Court vide its Order dated 13/02/2020 in Contempt Petition No. 2 of 2020 in PIL WP No. 26 of 2017, granted a period of six weeks' time from the date the Order to the Hotel to carry out the demolition work of part of the swimming pool and the part of the hut, under supervision of NGPDA, Panaji.*

8. *The WRD has by its letter dated 12/02/2020 addressed to the GCZMA has enclosed a Preliminary Report dated 12/02/2020 by Scientist Shri. V. B. Sharma, Central Water and Power Research Station (CWPRS), Ministry of Jal Shakti, Government of India, Pune observing that the existing retaining wall is able to protect the river bank from the two forces exerted by the high river currents and wave impact. It further observed that the two forces may cause erosion in the vicinity of the hotel area if the wall is demolished. The report states that final findings on the effect of demolition can be provided after carrying out detailed studies based on field observation like local bathymetry in the river, sediment size of bed material, suspension sediments concentration, etc.*

9. *On 06/03/2020, site inspection was carried out by the Field Surveyors deputed by this Authority and Panchanama was drawn recording demolition of the offending part of the hut and swimming pool were in progress as per the NCSCM Plan and measurements were taken and found to be correct.*

10. *This Authority by a letter dated 13/03/2020 Ref. No. GCZMA/W.P. No. 333/1993/17/2669 informed the Hotel to bear the costs of Rs.10,00,000/- with*

additional tax of 18% towards GST payable to the Central Water and Power Research Station (CWPRS), Pune for a scientific report on the aspect of the retaining wall if the same is demolished. The Hotel by its letter dated 19/03/2020 tendered the said amount with the WRD to be transferred to CWPRS, Pune.

11. On 12/05/2020, site inspection was carried out by the Field Surveyors deputed by this Authority and Panchanama was drawn recording that demolition of offending parts of the hut and swimming pool have been satisfactorily completed in terms of Demolition Order dated 30/01/2020 and Panchanama annexed thereto based on the NCSCM Report and Plan and also that the Order of High Court dated 13/02/2020 stood complied.

12. This Authority has received letter dated 16/09/2020 from the WRD enclosing Technical Report No. 5850 dated 10/09/2020 from the Central Water and Power Research Station (CWPRS), Pune which agency has undertaken 'Mathematical Model Studies on Hydrodynamics and Sedimentation for Demolition of Retaining Wall at Marriott Hotel, Goa'.

13. The scientific report has recorded that

"the site is influenced by waves, tide and large river discharge conditions. River discharges and waves play an important role in erosion of bank in the vicinity of Marriott hotel. This stretch is prone to erosion. Other major cause of erosion at the left bank is bending of river which is result of a large land outcrop towards Reis Magos Fort site (right bank site) and flow gets deviated towards the left bank, which can also be correlated with the number of protective/anti-erosion works implemented by the state since 1978 all along the left bank. The river has the tendency to move towards left bank due to sharp bend in the upstream. This oblique flow along with high river discharge combined with severe wave condition is the worst scenario for the bank near Marriot hotel. The demolition of wall would result in shifting of channel towards left bank and this would further worsen the situation as angle of oblique current would further increase. The peak currents near the Marriott hotel wall are of the order of 0.9 m/s. In addition to this, breaking and non-breaking waves exert huge thrust on the wall. After shifting the wall, the whole force would be borne by the bank resulting into further erosion. The distance of pillar of Marriott hall hardly remains at about 5m. The distance between imaginary line and wall footing would further be less. Shifting of left bank would not help in improving the hydraulic conditions in the river instead it may

further worsen the situation as it will increase the curvature of bend in this region."

14. *The report has concluded as follows:*

- *The high river discharges and wave and oblique flow towards left bank due to land outcrop at Reis Magos fort site (right bank side) play major important roles in erosion of bank in the vicinity of Marriott hotel.*
- *Shifting of left bank would increase the curvature of river resulting in more erosion at the left bank.*
- *The demolition of existing wall would result in shifting of channel towards left bank and this would further worsen the situation of erosion as angle of oblique current would further increase and the wave forces would be borne by bank alone.*

15. *Goa Foundation, the Complainant, argued earlier at length on the matter and in the written submission stated that that there are two directions to be complied by this Authority in compliance to the judgment passed by the Hon'ble High Court of Bombay at Goa vide order dated 29/06/2015 in WP No.333/1993 contained in paragraph 37 direction No.2 and 3 which pertains to prevention erosion of bank and siltation of river Mandovi and to take measures to provide access to the beach. Complainant further argument is that the direction No.2 & 3 of the Hon'ble High Court in the judgment dated 29/06/2015 pertains to State of Goa and not to the GCZMA and GCZMA cannot decide upon the same. The Directions issued in order dated 24/08/2018 passed in PIL WP 26/0217 by the Hon'ble High Court are to be complied by the GCZMA. The report called by the GCZMA from WRD with regards to retaining wall through outsource from CWPRS, Pune is entirely unwarranted. The retaining wall has been identified as violation of CRZ notification and had to be removed. The Hon'ble High Court had directed the Authority to demolish all the offending structures.*

16. *The Ld. Senior Counsel Nitin Sardesai for the respondent in his argument stated that there was the existing protection wall built by WRD in the year 1978 at Miramar near Youth Hostel Panaji located in Chalta No.18 PT Sheet No.98 of Panaji City. He further said that there is outer bend meandering river channel on the shore line and hence the coast is subjected to erosion due to strong tidal and river flows. The said protection wall of 1978 collapsed and its remnants of the said protection wall can be seen on the river side of the subject matter retaining*

wall. Due to erosion prevalent along the said shoreline the State Govt. has taken anti-erosion protection measures. Even the judgment of the Hon'ble High Court dated 29/06/2015 speaks about the prevention of erosion of river bank and siltation of river Mondovi. The report submitted by CWPRS, Pune is the scientific report and the conclusions therein have to be taken into consideration by the Authority while deciding the issue. The credibility of the report is not disputed by the petitioner/complainant. Even the 1991 notification has provision to provide for measures to prevent coastal erosion. As per the report of CWPRS, Pune the removal of the retaining wall will have devastating effect on the entire coastal stretch in the vicinity of the Hotel. The Hon'ble High Court had not directed for removal of the offending structure but only please to direct the Authority to take necessary action in accordance with law. Directions contained in paragraph 37(i)(ii) of judgment order dated 29/06/2015 in WP No.333/1993 have to be read in entirety and cannot be read in isolation as contended by the Petitioner/Complainant. Further, the existing retaining wall is 5-6 mts landwards towards the old collapsed retaining wall of Water Resources Department, Govt of Goa and is in the land of the Hotel not in public beach.

17. This Authority heard arguments of both parties on the aspect of the retaining wall. Both parties have also filed their written submissions before this Authority. This Authority also called upon the Chief Engineer, WRD – Mr. Shrikant Patil and his team to get an overview and understanding of the report and matter at hand in respect of the retaining wall. On this date, the Water Resources Department officers made a detailed presentation to the GCZMA and explained to the members of the GCZMA about the entire stretch of land being prone to erosion along the Bhagwan Mahavir Bal Vihara park at Campal upto Miramar beach and more particularly in front of the Hotel and the steps taken by the WRD over the years to prevent erosion, which has not been very effective on account of the strong tidal effect and gusty wind. They also showed old retaining wall of 1978 which collapsed in front of the Mariott Hotel. They stated that CWPRS, Pune is a national level reputed agency in the field of water resource management and the Water Resources Department, Govt of Goa has regularly been taking their assistance in planning various erosion prevention measures over the years.

18. The Authority took the statement of Shri Shrikant Patil, Chief Engineer, Water Resources Department, Govt of Goa which states as follows:

> "Based on the mathematical model studies carried by CWPRS, Pune, any demolition of existing wall would cause further damages to the left bank of the river.

On being asked about the impact of demolition of retaining wall under question on other sea erosion protection measure taken by the Department, I state that the flow will shift towards the left side. Further, it may damage the banks and anti sea erosion works carried out by the WRD at Youth Hostel, Campal Stadium and Bhagwan Mahavir Forest Garden. The old wall collapsed due to oblique currents and due to wave forces.

At this juncture it may cause further damages if the existing wall is demolished."

AND WHEREAS, in the meeting **249th GCZMA meeting held on 18/02/2021** it was decided as follows:- *"In view of the direction passed by the Hon'ble High Court by Judgment dated 29/6/2015 in Paragraph 37 (ii) with respect to the measures to be taken to prevent the erosion of the bank and siltation of the river Mandovi along the concerned land of the Hotel, this Authority has sought for a Report from the WRD. The WRD has consulted an expert agency of the Union Ministry of Jalshakti, Government of India, namely Central Water and Power Research Station* ***(CWPRS),*** *Ministry of Jal Shakti, Government of India, Pune which possesses technical expertise in the field of coastal protection and specialises in conducting physical and mathematical model studies.*

This Authority considered the Expert Report dated 10/09/2020 received from the Central Water and Power Research Station ***(CWPRS),*** *Ministry of Jal Shakti, Government of India, Pune being 'Mathematical Model Studies on Hydrodynamics and Sedimentation for Demolition of Retaining Wall at Marriott Hotel, Goa' submitted through the WRD. The report in conclusion states as follows:*

- *The high river discharges and wave and oblique flow towards left bank due to land outcrop at Reis Magos fort site (right bank side) play major important roles in erosion of bank in the vicinity of Marriott hotel.*
- *Shifting of left bank would increase the curvature of river resulting in more erosion at the left bank.*
- *The demolition of existing wall would result in shifting of channel towards left bank and this would further worsen the situation of erosion as angle of oblique current would further increase and the wave forces would be borne by bank alone.*

The Authority consulted the Water Resources Department to clarify on the issue of retaining wall as per the abovementioned report. The Chief Engineer, Water Resources Department expressed serious concern over impact of removal of

retaining wall on anti-erosion works in the vicinity viz at Youth Hostel, Sports Complex etc and cautioned the Authority on shifting of the retaining wall.

The CRZ Regulations also provide for "prohibition of land reclamation, bunding, disturbing the natural course of sea water with similar obstructions except those required for control of coastal erosion" and....

Considering the spirit of the directions of Hon'ble Bombay High Court at Goa, CRZ Regulations, reports of the expert body and the facts on the ground, the Authority observes that the removal of existing retaining wall may cause irreparable damage to the shoreline resulting in eastward shifting of the river and causing damage to sea-erosion prevention measures taken by the Water Resources Department, Govt of Goa in the vicinity viz at Youth hostel, Campal Stadium, Bhagwan Mahavir Garden etc as has been observed by looking at old collapsed retaining wall of 1978 built by the Water Resource Department in front of the existing retaining wall under question. Therefore, in the interest of prevention of erosion of the shoreline and to protect the erosion prevention works put up by the Water Resources Department, Govt of Goa in the immediate vicinity of the structures, the Authority decides that the retaining wall should be left in the present condition and should be properly maintained.

The Authority directs that the Hotel shall not put the area between the retaining wall and the imaginary line drawn parallel to the HTL of 1991 as per the NCSCM Report for any kind of commercial use. As a measure to clearly delineate this area, the Hotel shall erect bio-fencing at the imaginary line under the supervision of experts of the GCZMA.

The matter stands disposed."

NOW THEREFORE, the GCZMA in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986 (Central Act 29 of 1986) read with sub-rule (3) (a) of Rule 4 of the Environment (Protection) Rules 1986, and read with power vested with the GCZMA vide Order S.O. 3975 (E) dated 31/10/2019 issued by the Ministry of Environment & Forests, Government of India, hereby discharges proceedings in respect of retaining wall in property **Hotel Goa Marriott Resort c/o V.M Salgaocar Corporation Pvt Ltd, Salgaocar Centre, E 4, Murgaon Estate, Off Airport Road, Chicalim, Goa** interms of decision taken **249th GCZMA meeting held on 18/02/2021 .**

a) Further, **Hotel Goa Marriott Resort c/o V.M Salgaocar Corporation Pvt Ltd, Salgaocar Centre, E 4, Murgaon Estate, Off Airport Road, Chicalim, Goa**

shall not put the area between the retaining wall and the imaginary line drawn parallel to the HTL of 1991 as per the NCSCM Report for any kind of commercial use.

b) As a measure to clearly delineate this area, the Hotel shall erect bio-fencing at the imaginary line under the supervision of experts of the GCZMA interms of decision taken **249th GCZMA meeting held on 18/02/2021.**

The proceedings are disposed off accordingly.

For and on behalf of the
Goa Coastal Zone Management Authority

1/03/2021

(Dasharath Redkar)
Member Secretary (GCZMA)

To,

Hotel Goa Marriott Resort c/o V.M Salgaocar Corporation Pvt Ltd, Salgaocar Centre, E 4, Murgaon Estate, Off Airport Road, Chicalim, Goa, 403711.

Copy to:-

1. **The Collector &District Magistrate, (North), Office of the Collector (North), Panaji-Goa**.... *for information and necessary action.*

2. **The Deputy Collector & S.D.O of Tiswadi, having office at Panaji**... *for information and necessary action.*

3. **The Goa Foundation through its Secretary, Dr. Claude Alvares, G-8, St Britto's Apartments. Feira Alta, Mapusa-Goa**...*for information only.*

4. **The Scientific Assistant, GCZMA**... *to upload copy of this order on GCZMA website immediately.*

TRUE COPY

ANNEXURE P-9

NOTARY
Venefreda C.R.P.B. Gracias
STATE OF GOA
Reg. No. 301
Expiry Date
27/2/2024
GOVT OF GOA

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO. 2/2020

IN

PIL WRIT PETITION NO. 26/2017

THE GOA FOUNDATION ... PETITIONER

VERSUS

SHRI PARIMAL RAI & ORS. ... RESPONDENTS

AFFIDAVIT OF THE RESPONDENT NO. 1

I, Shri Parimal Rai, major of age, presently working as the Chief Secretary, Government of Goa, having Office at Secretariat, Porvorim, Goa, Indian National, the Respondent No. 1 in the above petition, do hereby on solemn affirmation, state and submit as under:

1. I say that I am working as the Chief Secretary, Government of Goa since 01.01.2019. I say that I have been arrayed as Respondent No. 1 in the above Contempt Petition.

2. I say that I have perused and understood the contents of the Contempt Petition along with the annexures thereto. I am filing the present reply for the limited purpose of opposing admission of the Contempt Petition. I crave leave to file a detailed/additional affidavit at a later stage, if required.

3. I deny all averments made in the petition to the extent the same are contrary to or inconsistent with what I have stated in the present Affidavit. All allegations made against me are specifically denied. I say that no statement in the petition should be deemed as admitted for want of a specific denial.

4. At the outset, I tender unconditional apology for delay in complying with the directions of this Hon'ble Court. I say that the same was not intentional and is only on account of bona fide reasons.

5. I also apologize for not filing this Affidavit on my personal behalf earlier. I say that this was also not deliberate and was on account of the understanding that the Goa Coastal Zone Management Authority was permitted to file an Affidavit to demonstrate and satisfy this Hon'ble Court that there was no

case of contempt. I say that accordingly, the Authority had filed two Affidavits, one dated 13.02.2020 affirmed by the then Member Secretary Shri Johnson Fernandes and the second dated 17.3.2021 by the present Member Secretary, Shri Dashrath M. Redkar, setting out in detail the steps taken and the compliance with the Judgment and Orders dated 29.6.2015 in Writ Petition No. 333/1993 and 24.8.2018 in PIL Writ Petition No. 26/2017. Since the said Affidavits clearly set out the steps taken by the Authority, I crave to refer to and rely upon both the said Affidavits, as if the contents of the same are specifically set out herein, so as to avoid repetition.

6. I say that as already pointed out in the said Affidavits, the action was taken in accordance with law, by following the procedure of issuing the Notice and hearing the parties, particularly in view of the directions in the Judgment of this Hon'ble Court in Writ Petition No. 333/1993 which required the authorities to re-examine whether any construction at the site would violate the norms of CRZ II area in the CRZ Notification and if any violation was noticed, to take action in accordance with law after hearing the Respondent Hotel. Further, the other direction which had to be complied with was the direction to the State of Goa to take all measures to prevent the erosion of the

bank and siltation of the river Mandovi along the land of the private Respondents.

7. I respectfully submit that to have a correct perspective of the entire matter in controversy, the Judgment dated 24.8.2018 passed by this Hon'ble Court in PIL Writ Petition No. 26/2017 has to be read with the Judgment dated 29.6.2015 passed by this Hon'ble Court in Writ Petition No. 333/1993.

8. I say that after receiving the Report from the NCSCM, the Authority issued a Show Cause Notice to give a hearing and to take action in accordance with law, as directed by this Hon'ble Court. I say that the said Notice thereafter culminated in a demolition Order issued on 30.01.2020 and the offending structures, save and except the retaining wall, have been removed, pursuant to the time granted to the private Respondent by this Hon'ble Court, which was also verified by the representatives of the Authority in the inspection conducted thereafter.

9. I say that the other aspects regarding the retaining wall have also been considered by the Authority and Order dated 16.3.2021 has come to be passed. I say that a bare reading of

the Order dated 16.3.2021 of the Authority would indicate that in the light of the observations made by the Central Water and Power Research Station, Pune, a premiere institute of Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation of the Government of India in its Report prepared in the month of September 2020 to the effect that the continued existence of the retaining wall was critical to ensure prevention of erosion. I say that though the Show Cause Notice has been discharged in relation to the retaining wall, certain conditions have been put by the Authority that the Respondent Hotel shall not put the area between the retaining wall and the imaginary line drawn parallel to the HTL as per the NCSCM Report to any kind of commercial use. Further, in order to clearly delineate the area, the Respondent Hotel has been directed to erect a bio-fencing at the imaginary line under the supervision of the Authority.

10. I say that to prevent the erosion of the bank and siltation of river Mandovi along the land of the Respondent Hotel, for which purpose the State of Goa was enjoined to take necessary steps, the Authority decided that the retaining wall could be allowed to continue subject to certain conditions. I say that the GCZMA is an Authority which is constituted in terms of the

powers conferred under the Environment (Protection) Act, 1986. The Authority is an expert body appointed to deal with issues relating to the Coastal Regulation Zone. I say that the Authority has various powers and has to deal with environmental issues relating to the Coastal Regulation Zone which may be referred to it by the Government. The Authority also has to identify coastal areas highly vulnerable to erosion or degradation and to take appropriate measures for such areas.

11. I say that the other Department which has an important role to play in areas prone to erosion and to take appropriate measures in relation to such areas is the Water Resources Department. I say that in view of the direction to the State Government to take all measures to prevent the erosion of the bank and siltation of river Mandovi along the land of the Respondent Hotel, this issue was also examined by the Authority before taking a decision on the retaining wall. I say that the Authority called for opinion/report from the Water Resources Department.

12. I say that the WRD submitted a report on 12.02.2020, based on a preliminary report pursuant to inspection by a Scientist of the Central Water and Power Research Station,

Pune, a premiere institute of the Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation of the Government of India, that the retaining wall was able to protect the river bank from the two forces exerted by high river currents and wave impact, which may cause erosion in the vicinity if the wall is demolished. The final findings were to be provided after carrying out detailed studies based on field observation like local bathymetry in the river, sediment size of bed material, suspension sediments concentration, etc. Thereafter the final report was received along with the letter dated 16.9.2020 of the WRD, which was placed before the Authority which highlighted the effects that the demolition of the wall would have on the erosion in the area.

13. I say that the Authority thereafter again consulted the Water Resources Department and recorded the statement of the Chief Engineer of the Department. The WRD also gave a power point presentation to the Authority. I say that the Authority, after considering all the issues and the directions issued by this Hon'ble Court, passed the Order dated 16.3.2021. I say that since existence of the retaining wall is critical, even if the existing one is demolished, the new wall will have to be

constructed at that very place to avoid erosion and siltation at the expense of the Government.

14. As regards the third issue about the access being blocked, a report was called for from the Water Resources Department, vide letter dated 06.02.2020 issued by the Authority. The WRD responded by a letter dated 12.02.2020 pointing out that an inspection was held and it was found that the access connected to the public road leading to the beach was clear of obstruction and was about 100 metres in length and 5 metres in width near the Hotel. Photographs were also supplied which are a part of the letter, which is enclosed along with the Affidavit dated 13.02.2020 filed by the Member Secretary.

15. I, therefore, say that the State Authorities have acted in terms of the directions contained in both the Judgments of this Hon'ble Court. I say that there is no violation, either deliberate or otherwise, on my part. Hence, no case is made out of any contempt on my part. The petition, as against me, may therefore be rejected.

16. I, however, submit that in the event this Hon'ble Court comes to the conclusion that the retaining wall is liable to be

demolished, notwithstanding what has been stated hereinabove, I shall ensure that the same is carried out as per the directions of the Court.

NOTARY
Venefreda C.P.P.B. Gracias
STATE OF GOA
Reg. No. 301
Expiry Date
27/2/2024
GOVT OF GOA

17. I say that all that is stated in paras 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 is true to my knowledge and the same is based on the official records maintained by the Respondents.

Solemnly affirmed at Porvorim, Goa,

On this 30th day of September, 2021.

DEPONENT

NOTARIAL NOTARIAL NOTARIAL

NOTARY
Venefreda C.P.P.B. Gracias
STATE OF GOA
Reg. No. 301
Expiry Date
27/2/2024
GOVT OF GOA

NOTARIAL NOTARIAL NOTARIAL

Solemnly affirmed before me

Parimal Rai

Who is identified before me by

At Calangute - Goa

Sr. No. 110/09/2021/P

Date. 30/09/2021

Gracias

Venefrada C.P.P.B Gracias
Advocate & Notary Goa State

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO.2 OF 2020

IN

P.I.L. WRIT PETITION NO.26 OF 2017

THE GOA FOUNDATION, THR. ITS SECRETARY, DR. CLAUDE ALVARES ... Petitioner.

Versus

PARIMAL RAI, OFFICE OF THE CHIEF SECRETARY AND 2 ANR. ... Respondents.

Ms. Norma Alvares *with* Mr. Om D'Costa, Advocates *for the Petitioner.*

Mr. S. D. Lotlikar, Senior Advocate *with* Mr. Deep D. Shirodkar, Additional Government Advocate *for the Respondent Nos.1 and 2.*

Mr. S.R. Rivankar, Senior Advocate *with* **Mr. R. G. Rivankar** *and* **Ms. Nishita S. Rivankar, Advocates** *for* **Rivankar, Advocate** *for the respondent No.3 in CP-2-2020.*

Mr. Rafique Dada, Senior Advocate *with* **Mr. Nitin D. Sardessai, Senior Advocate** *with* **Mr. Jitendra P. Supekar, Mr. Rishit Badani, Mr. Sufiyan Sayed, Mr. Shivam Fadte** *and* **Mr. Kabir Sabnis, Advocates** *for the original Respondent No.3 in PILWP-26-2017.*

WITH

MISC. CIVIL APPLICATION NO.64 OF 2020

IN

P.I.L. WRIT PETITION NO.26 OF 2017

GOA COASTAL ZONE MANAGEMENT

AUTHORITY, THR. ITS MEMBER SECRETARY ... Applicant.

Versus

THE GOA FOUNDATION, THR. ITS SECRETARY, DR. CLAUDE ALVARES ... Respondents.

Ms. Norma Alvares, *with* **Mr. Om D'Costa, Advocate** *for the Applicant.*

CORAM: A.K. MENON &
R.N. LADDHA, JJ.

DATED: 7th April 2022

P.C:

1. By this petition, the petitioner seeks to hold the respondents, the Chief Secretary, Government of Goa, Secretary(Environment), Government of Goa and the Member Secretary of the Goa Coastal Zone Management Authority in contempt of the judgment of this Court dated 24.08.2018 by which the Court issued detailed directions in paragraph 93 of the judgment as reproduced below for ease of reference:

> *"93. In view of the above discussions, we dispose of the Writ Petition by following directions :*
>
> *(I) The impugned decision of the GCZMA in the meeting dated 1 August 2017 accepting the Second Report and the Second Report filed by the GCZMA, are quashed and set aside;*

(II) (a) The Authorities shall, within three weeks from today, approach the National Centre for Sustainable Coastal Management, Chennai in respect of the paragraphs 37(i) of the Judgment and Order dated 29 June 2015 in Writ Petition No.333 of 1993;

(b) The NCSCM is requested to submit an estimate of costs to the Authorities within a period of three weeks from the date of receipt of the proposal from the Authorities

(c) After the estimate of costs is received from the NCSCM, the Authorities will forthwith call upon the Respondent No.3-Hotel to make payment of costs estimated by the NCSCM, directly to the NCSCM, within a period of three weeks.

(d) The NCSCM will carry out the exercise as indicated in paragraph 37(i) of the Judgment and Order dated 29 June 2015, within in a period of four months thereafter and prepare a report.

(e) It is open for the NCSCM to proceed to carry out the exercise without waiting for the tender of costs by the Respondent No.3-Hotel.

(f) After the exercise is so completed by the NCSCM, the Authorities, based on such conclusions arrived at by the NCSCM will take necessary action against the Respondent No.3-Hotel in respect of an area which is found to be in violation of the CRZ Notification of 1991, within a period of four weeks.

(g) The Authorities and the Respondent No.3 Hotel shall supply all the necessary documents and information to the NCSCM as and when required for the purpose of carrying out the exercise.

(h) Any violation of the above directions both, by the Authorities and the Respondent No.3-Hotel, will be viewed seriously and will be treated as a contempt of the order of this Court.

(i)The above directions shall be read along with the observations made by us in this Judgment.

(III) The Respondents-Authorities shall take necessary steps forthwith to ensure that the beach in question is made accessible to the general public."

2. Effectively, an independent report had to be obtained from the National Centre For Sustainable Coastal Management located in Chennai to make a detailed report on the action necessary to be taken in the facts and circumstances in the case. That report is now on record. It is the case of the petitioner that the report clearly observes that the structure put up by the third respondent-hotel in PIL Writ Petition No.26 of 2017 was in breach of the environmental laws and would require the hotel to demolish the offending structures.

3. It is not in dispute that of the three offending structures two have now been removed, i.e., the swimming pool and part of the hut located alongside the swimming pool. What has not been demolished is a wall on the beach side which was admittedly put up by the hotel. That structure is said to obstruct clear and easy access of the members of the public to and fro the beach front.

4. Having heard learned counsel for the parties at length, we find that in the affidavit in reply filed on behalf of the respondent no.1, a statement has been made by the Chief Secretary in paragraph 16 which is reproduced below for ease of reference:

> *"16. I, however, submit that in the event this Hon'ble Court comes to the conclusion that the retaining wall is liable to be demolished, notwithstanding what has been stated hereinabove, I shall ensure that the same is carried out as per the directions of the Court."*

5. The State is, therefore, of the clear view that in the event this Court finds that directions in Order dated 24.08.2018 passed in PIL Writ Petition no.26 of 2017 which, we find, is based on an earlier judgment dated 29.06.2015 in Writ Petition no.333 of 1993 are not complied with, it would mean that the retaining wall of the hotel is also

required to be demolished. The State is willing to do so being conscious of the import of the aforesaid Order.

6. In our view, if we accept that position and having heard the learned counsel for the parties and despite having examined the various reports filed on behalf of the Goa Coastal Zone Management Authority, it would be necessary to hear the respondent no.3 in PIL Writ Petition no.26 of 2017. The respondent no.3 is not a party to this petition. Although Mr. Dada, learned counsel appears on their behalf, he submits that he has not been able to make his submissions in response to detailed submissions made by the parties today. At this stage, Ms. Alvares, learned counsel seeks leave to file additional affidavit placing on record photographic evidence as available on date of alleged violation which is allegedly continuing.

7. After considering the record placed before this Court, we direct as follows:

(i) The original respondent no.3 in PIL Writ Petition no.26 of 2017 now known as *V.M. Salgaonkar Corporation Pvt. Ltd.,* shall be impleaded in the Contempt Petition.

(ii) Amendment to be carried out within one week. Re-verification is dispensed with. Copies of this petition after amendment shall be served forthwith upon the said respondent. Needless to mention that copies of the entire set of proceedings in this Petition shall be furnished to the newly added respondent at their cost.

(iii) The newly added respondent is permitted to file a reply, if so advised, within a period of two weeks of the amended copy being served upon the said respondent.

(iv) Rejoinder, if any, to be filed within one week thereafter.

(v) Leave is granted to Petitioner to file such additional affidavit within 2 weeks from today.

8. List the matter on 16th June, 2022.

R. N. LADDHA, J. A.K. MENON, J.

TRUE COPY

IN THE HON'BLE HIGH COURT OF JUDICATURE

OF BOMBAY AT PORVORIM, GOA

Misc. Civil Application No. 150 / 2022

in

CONTEMPT PETITION NO.2 OF 2020
in
P.I.L.W.P. No.26/2017

The Goa Foundation
through its Secretary, Dr. Claude Alvares,
age 74 years, having Regd. Office at
Room No 7, Above Mapusa Clinic,
Mapusa, Goa - 403507.
Email id: goafoundation@gmail.com

...**APPLICANT**

In

The Goa Foundation
through its Secretary, Dr. Claude Alvares,
age 74 years, having Regd. Office at
Room No 7, Above Mapusa Clinic,
Mapusa, Goa - 403507.
Email id: goafoundation@gmail.com

...**PETITIONER**

v/s.

1. **SHRI PARIMAL RAI,**
   Office of the Chief Secretary,
   Secretariat, Porvorim, Goa – 403521.

2. **SHRI PUNEET KUMAR GOEL,**
Secretary (Environment),
c/o Secretariat, Porvorim, Goa – 403521.

3. **SHRI JOHNSON BEDY FERNANDES,**
Member Secretary**,** The Goa Coastal
Zone Management Authority,
with address at 1st Floor, B-Wing,
Pandit Deendayal Upadhyay Bhavan,
Pundalik Nagar, Alto-Porvorim,
Bardez, Goa – 403521.

4. **V.M. SALGAOCAR CORPORATION PRIVATE LIMITED**, having its registered office at Salgaocar Centre, E4, Murgaon Estate, Off Airport Road, Chicalim, Goa – 403711.

….**RESPONDENTS**

(Above addresses are all registered addresses of parties)

APPLICATION TO AMEND THE CONTEMPT PETITION

MAY IT PLEASE YOUR LORDSHIPS

1. Contempt Petition No. 2/2020, which is pending adjudication before this Hon'ble Court, has been filed on 15.01.2020 against the persons occupying the posts of Chief Secretary, the Secretary (Environment) and the Member Secretary, Goa Coastal Zone Management Authority, due to noncompliance by these officers with the directions of this Hon'ble Court dated 24.08.2018 disposing of the PIL WP No 26/2017. The said directions ought to have been complied with by November 2019. The matter was adjourned on several occasions to enable compliance, which however has not yet been achieved.

2. During its pendency before this Hon'ble Court, the officers holding the posts of Chief Secretary; Secretary [Environment] and Member Secretary, Goa Coastal Zone Management Authority, have changed / been re-assigned. As such, it would be necessary for the Officers currently in charge of the above posts to also be impleaded as Party Respondents in Contempt Petition No. 2/2020 since the Court's orders are yet to be complied with.

3. The Applicant therefore seeks the Court's leave in this Application to amend the cause title to reflect the current status of the existing respondents and to implead **Shri Arun Kumar Mishra** [*Secy., (Env.)*] and **Shri Dasharath M. Redkar** [*M.S., GCZMA*] as Party Respondents in the Contempt Petition.

4. The Applicant submits that it is necessary and proper that Contempt Petition No. 2/2020 is amended in terms of the Schedule which is annexed to this application, and that the amendment does not alter or expand the scope of the Petition.

Prayers

5. This Hon'ble Court may therefore be pleased to permit the Applicant:

i) to amend Contempt Petition 2/2020 as per the Schedule attached to this application.

For the above, the applicant is truly grateful.

Place: Porvorim, Goa
Date: 13.06.2022

Applicant

“Schedule”

1. **Amend the designation of Resp. No. 2 in the cause title as follows:**

   “2. **SHRI PUNEET KUMAR GOEL**
   former Secretary, Environment, and
   present Chief Secretary,
   % Secretariat, Porvorim, Goa.”

2. **Add the following as Resp. Nos. 5 and 6:**

   “5. **SHRI ARUN KUMAR MISHRA,**
   Secretary (Environment),
   c/o Secretariat, Porvorim, Goa – 403521.

   6. **SHRI DASHARATH M. REDKAR**,
   Member Secretary**,**
   Goa Coastal Zone Management Authority,
   4th Floor, Dempo Towers Bldg.,
   Patto Plaza, Panaji, Goa – 403001.”

3. **After para 10, add the following as paras 10A, 10B and 10C:**

   "10A. Pursuant to filing his affidavit dated 30.09.2021, Shri Parimal Rai (Resp No 1) has demitted the office of Chief Secretary. Shri Puneet Kumar Goel (Resp No 2) is presently

the Chief Secretary. Shri Goel who was earlier holding office of Principal Secretary (Environment) when the contempt petition was filed, was relieved from the post on 02.07.2019 as per his affidavit dated 29.09.2021. The final decision not to demolish the compound was taken by the GCZMA after he demitted office. Nonetheless he justifies the decision of the GCZMA in his affidavit dated 29.09.2021. Shri Goel is presently the Chief Secretary of the State of Goa. Since being appointed to this office, he has not taken any steps to comply with the Hon'ble Court's directions dated 24.08.2018.

10B. Shri Arun Kumar Mishra (Resp No. 5) is presently holding the office of Secretary (Environment) and in this capacity he is the ex-officio Chairman of the GCZMA. During his tenure the GCZMA has taken the decision on 18.02.2021 not to demolish the compound wall of the hotel in defiance of this Hon'ble Court's directions to take action against the structures which are in violation of the CRZ Notification as per the report of the NCSCM.

10C. Shri Dasharath M. Redkar (Resp No 6) is presently the Member Secretary of the GCZMA. He was holding this office when the GCZMA took the decision on 18.02.2021 not to demolish the compound wall of the hotel. Shri Redkar has filed his affidavit dated 17.03.2021 enclosing thereto the decision of the GCZMA taken at its meeting held on 18.02.2021, not to demolish the retaining / compound wall of the hotel which falls within the prohibited area, in explicit disregard of the directions of this Hon'ble Court."

4. **In paragraph 33(a) dealing with the 'Reliefs', replace the words 'Resp Nos 1 - 3' with "Resp. No.s 1 – 3 and 5 - 6".**

IN THE HON'BLE HIGH COURT OF JUDICATURE

OF BOMBAY AT PORVORIM, GOA

Misc. Civil Application No. _____/ 2022

in

CONTEMPT PETITION NO.2 OF 2020
in
P.I.L.W.P. No.26/2017

The Goa Foundation ….**APPLICANT**

In

The Goa Foundation ….**PETITIONER**

v/s.

Shri Parimal Rai & Ors. ...**RESPONDENTS**

AFFIDAVIT

I, Dr. Claude Alvares, Secretary of the Applicant abovenamed, do hereby solemnly affirm and declare as under:-

1. I have today filed this Application for amending the original Contempt Petition filed before this Hon'ble Court.

2. That what has been stated in paras 1(p), 2(p), and 3 of the accompanying Application are in the nature of facts which are true to my own knowledge and the contents of paras 1(p), 2(p), 4 and 5 are my submissions made on legal advice which I believe to be true and correct. No part of it is false and nothing material has been concealed therefrom.

3. Further, that what has been stated in paras 1, 2 and 3(p) of the Schedule of the accompanying application is in the nature of facts which are true to my own knowledge, on the basis of information from official department websites and affidavits filed in the instant Petition, and the contents of paras 3(p) and 4 are submissions made on legal advice which I believe to be true and correct. No part of it is false and nothing material has been concealed therefrom.

Solemnly affirmed at Porvorim, Goa,
this the 13th day of June 2022

Deponent

///TRUE COPY///

ANNEXURE P-12

IN THE HON'BLE HIGH COURT OF JUDICATURE OF BOMBAY AT PORVORIM, GOA.

Misc. Civil Application No.2119/2022

in

M.C.A. No. 150/2022

in

Contempt Petition No.2/2020

***in* P.I.L. W.P. No.26/2017**

The Goa Foundation
through its Secretary, Dr. Claude Alvares,
age 74 years, having Regd. Office at
Room No 7, Above Mapusa Clinic,
Mapusa, Goa - 403507.
Email id: goafoundation@gmail.com.

...**APPLICANT**

v/s.

1. **SHRI PARIMAL RAI,**
   Office of the Chief Secretary,
   Secretariat, Porvorim, Goa – 403521.

2. **SHRI PUNEET KUMAR GOEL,**
   Secretary (Environment),
   c/o Secretariat, Porvorim, Goa – 403521.

3. **SHRI JOHNSON BEDY FERNANDES,**
   Member Secretary**,** The Goa Coastal
   Zone Management Authority,
   with address at 1st Floor, B-Wing,
   Pandit Deendayal Upadhyay Bhavan,
   Pundalik Nagar, Alto-Porvorim,
   Bardez, Goa – 403521.

4. **V.M. SALGAOCAR CORPORATION PRIVATE LIMITED**, having its registered office at Salgaocar Centre, E4, Murgaon Estate, Off Airport Road, Chicalim, Goa – 403711.

….**RESPONDENTS**

(Above addresses are all registered addresses of parties)

APPLICATION TO AMEND
M.CA. 150 / 2022 *in* C.P. 2/2020

MAY IT PLEASE YOUR LORDSHIPS

1. This application is being filed to amend the MCA No.150/2022 that was filed to implead one additional party as Respondent in the contempt petition. From the affidavit filed by the Member Secretary, GCZMA, the Applicant has realized that inadvertently it has omitted to join the person holding the post of Environment Secretary / Chairperson, GCZMA, as a Respondent when the decision not to comply with the Court's direction regarding removal of the compound wall was taken.

2. The Applicant therefore made inquiries and found that this decision was taken during the tenure of Shri Kunal, IAS, who was chairperson between the tenures of Shri Puneet Kumar Goel (02.07.2019 to 19.07.2020) and the present chairperson, Shri Arun Kumar Mishra (taken charge from 01.12.2021). The GCZMA passed its order relating to the removal of the wall on 18.02.2021.

3. In view of these facts, it is necessary to include Shri Kunal in the list of respondents to the contempt petition, as prayed for in the MCA No.150/2022. The said MCA No. 150/2022 may therefore be amended as follows:

a) In Sr. No. 2 of the "Schedule", after Respondent No.s 5 and 6, add the following as Respondent No. 7:

7. **SHRI KUNAL, IAS**,
Former Secretary [Environment),
c/o Secretariat, Porvorim, Goa - 403521.

b) In Sr. No. 3 of the "Schedule", after para 10A, add the following as para 10AA:

"10AA. Shri Kunal, IAS, was chairperson of the GCZMA during the period in which decisions relating to the implementation of this Hon'ble Court's orders in connection with the removal of the wall were taken by the GCZMA. As per the statement made by the Member Secretary, GCZMA, who is also sought to be made a Respondent in the contempt petition, decisions were taken about the offending wall during the GCZMA meeting held on 18.02.2021, which was presided over by Shri Kunal. It

was during his tenure as Chairman that the GCZMA has taken the decision on 18.02.2021 not to demolish the compound wall of the hotel, in defiance of this Hon'ble Court's directions to take action against the structures which are in violation of the CRZ Notification as per the report of the NCSCM. In view of this undisputed fact, Shri Kunal is also liable for being cited in contempt of the order of this Hon'ble Court on the same grounds that are set out in the contempt petition."

c) **In Sr. No. 3 of the "Schedule", replace the existing para 10B with the following:**

"10B. Shri Arun Kumar Mishra (Resp No. 5) is presently holding the office of Secretary (Environment) and in this capacity he is the ex-officio Chairman of the GCZMA."

d) **In Sr. No. 4 of the "Schedule", replace the existing text with "*In paragraph 33(a) dealing with the 'Reliefs', replace the words 'Resp Nos 1 - 3' with "Resp. No.s 1 – 3 and 5 - 7".***

Prayers

4. This Hon'ble Court may therefore be pleased to permit the Applicant:

i) To amend M.C.A. 150/2022 in Contempt Petition 2/2020 as specified in paragraph 3 hereinabove.

For the above, the Applicant is truly grateful.

PLACE – PORVORIM, GOA

DATE – 29.09.2022 Applicant

IN THE HON'BLE HIGH COURT OF JUDICATURE OF BOMBAY AT PORVORIM, GOA.

Misc. Civil Application No._____/2022

in

MCA No.150/2022

in

Contempt Petition No.2/2020

in P.I.L. W.P. No.26/2017

THE GOA FOUNDATION

…**Applicant**

V/S

SHRI PARIMAL RAI AND ORS ...**Respondents**

AFFIDAVIT IN SUPPORT OF THE APPLICATION

I, Dr. Claude Alvares, Indian National, Secretary of the Applicant above named, do solemnly state on oath as under:

1. I say that I have filed today the accompanying Misc. Civil Application for the reliefs sought therein.

2. I say that this Application has been drafted on my instructions. I solemnly declare and say that what has

been stated in paragraphs 1(p), 2, and 3(p) is true to the best of my knowledge and what is stated in paragraphs 1(p), 3(p) and 4 are in the nature of legal submissions which I believe to be true and correct. No part of it is false and nothing material has been concealed therefrom.

Solemnly affirmed at Porvorim, Goa,
this the 29th day of September 2022

Deponent

///TRUE COPY///

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
I. A. NO._____OF 2023
IN
SPECIAL LEAVE PETITION (C) NO._____OF 2023

IN THE MATTER OF:

THE GOA FOUNDATION ……PETITIONER

VERSUS

SHRI PARIMAL RAI & ORS. …….RESPONDENTS

APPLICATION FOR PERMISSION TO PLACE ON RECORD ADDITIONAL DOCUMENTS

TO,
THE HON'BLE CHIEF JUSTICE AND
HIS HON'BLE COMPANION JUSTICES
OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF
THE PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:

1. This Petition for Special Leave is being filed seeking leave to appeal against the final judgment and order dated 30th September 2022 passed by the Hon'ble High Court of Bombay at Goa in Contempt Petition No. 2/2020 in PIL WP 26/2017 ("**Impugned Order**") by which the contempt petition filed by the Petitioner has been dismissed and the Petitioner penalized with costs, despite the fact that contempt was and is still continuing and despite the fact that the Court itself in its judgment in PIL WP 26/2017 had directed contempt action to be taken in case of non-compliance with its directions.

2. The Impugned Order is passed, dismissing the contempt petition with costs of Rs.50,000/-, and accusing the Petitioner of "abuse of the

process of law." Only 2 weeks' time was granted to the Petitioner to deposit the penalty amount, which was deposited by the Petitioner under protest.

3. That in view of the above, following Additional Document is being filed with permission to place the same on record,

   i. True copy of letter dated 20.10.2022 to the Registrar, Hon'ble High Court of Bombay at Goa is annexed and marked as **ANNEXURE P-13 (Pg. No. 292)**.

4. The present application on behalf of the Petitioner is *bona fide* and an order for allowing the present application shall meet the ends of justice. The balance of convenience is in the favour of the Petitioner and against the Respondent.

PRAYER

In the facts and circumstances above mentioned the Petitioner most respectfully prays that this Hon'ble Court may be pleased to:

(a) Allow the present application seeking permission to place on record additional document marked as Annexure P-13;

(b) Pass such other and further order(s) as may deem fit and proper to this Hon'ble Court.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN & FILED BY:

(NUPUR KUMAR)
Advocate for the Petitioner

NEW DELHI
FILED ON: 05.01.2023

ANNEXURE P-13

GOA FOUNDATION

G-8, St Britto's Apartments, Feira Alta, Mapusa 403507 Goa, INDIA
Telephone: +91-9067176274
E-mail: goafoundation@gmail.com *Website:* www.goafoundation.org

Dated: 20.10.2022

To:
The Registrar,
Bombay High Court at Goa,
Porvorim, Bardez, Goa.

Subj: Compliance with judgment dated 30.09.2022 of the Bombay High Court at Goa in CP No.2/2020

Dear Sir,

I am enclosing a demand draft for Rs.50,000 drawn in the name of the "Goa State Legal Services Authority Cost Fund," as per the direction given by the Hon'ble Court in its judgment dated 30.09.2022 in CP No.2/2020.

This amount is being paid due to the fact that a time limitation has been imposed for payment of the amount. The payment, however, is made without prejudice to the rights of the Goa Foundation to challenge the order in appeal.

Yours faithfully,

GOA STATE LEGAL SERVICES AUTHORITY PORVORIM - GOA

Received
21/10/2022

Dr Claude Alvares
Director

Encl: DD for Rs.50,000 as above.

TRUE COPY

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURIDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2023

IN THE MATTER OF:

THE GOA FOUNDATION PETITIONER

VERSUS

SHRI PARIMAL RAI & ORS. RESPONDENTS

INDEX

S. Nos.	PARTICULARS	COPIES	COURT FEES
1.	SLP WITH AFFIDAVIT	-1+3	1720/-
2.	Application for Additional Document	1+3	100/-
3.	Vakalatnama	-1-	10/-
		TOTAL	1830/-

Place: New Delhi
Date: 05.01.2023

[NUPUR KUMAR]
Advocate for the Petitioner
AOR Code: 3078
A-178, Lower Ground Floor Defence Colony,
New Delhi-110024
Mobile: +918860692939
Email:nupurkumar01@gmail.com

I.C.No. 7056
Balwant Kumar
Mob:-7834919319

IN THE SUPREME COURT OF INDIA

CRIMINAL/CIVIL/ORIGINAL/APPELLATE/JURISDICTION

W.P./C.A./S.L.P. (Crl.)/(C) No. OF 2022

IN THE MATTER OF

The Goa Foundation .....PETITIONER(S)

VERSUS

Shri Parimal Rai, & Ors. .....RESPONDENT(S)

VAKALATNAMA

I/We, The Goa Foundation, thr. its Secretary Dr. Claude Alvares, **Petitioner**(s) Appellant(s)/ Respondent(s) in the above Suit / Appeal / **Petition** / Reference do hereby appoint and retain **NUPUR KUMAR** Advocate Supreme Court to act and appear for me/us in the above suit/Appeal/Petition/Reference/Review and on my/our behalf to conduct and prosecute/defend the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and application for Review, and to file and obtain, return of documents. and to deposit and received any money on my/our behalf in the Suit/appeal/Petition/Reference and in application of Review, and to represent me/us, and to take all necessary steps on my/our behalf in the above matter. I/We agree to pay his fees and our pocket expenses, agree to ratify all acts done by the aforesaid Advocate in pursuance of this authority.

Dated this the 24th day of December 2022

ACCEPTED AND IDENTIFIED AND CERTIFIED

(**NUPURKUMAR**)
ADVOCATE

THE GOA FOUNDATION Reg. No. 23/GOA/86

Petitioner(s)/Appellant(s)
Respondent(s)/Caveator(s)

MEMO OF APPERANCE

To,
THE REGISTRAR
SUPREME COURT OF INDIA
NEW DELHI-110001

Sir,

Kindly enter my appearance in the above mentioned petition/Appeal made on behalf of the Petitioner (s)/Appellant(s)/Respondent(s)

Yours Faithfully

ADVOCATES' WELFARE FUND STAMP ₹25 0034772 BAR COUNCIL OF DELHI DELHI TWENTYFIVE RUPEES

New Delhi
Dated 24.12.2022.

(NUPUR KUMAR)
Advocate for the Petitioner (s)
Respondent(s)/Appellant(s)
A-178, Lower Ground Floor,
Defence Colony,
New Delhi – 110024.
M. 8860692939.
Tel. Fax :- 011-41084945.
E-Mail nupurkumar01@gmail.com
AOR CODE - 3078

C E R T I F I C A T E

****

In view of the Affidavit filed by the Secretary of the Society ' THE GOA FOUNDATION ' for the purpose of 3 (B) (4) of the Societies Registration (Goa Amendment) Act,1998, it is hereby certified that the registration of the said Society, registered under the Societies Registration Act, 1860 under No.23/Goa/86 is hereby renewed for a further period of five years w.e.f. 11-6-2000.

Dated:- 2nd August, 2000.

OFFICE OF INSPECTOR GENERAL SOCIETIES
महानिरीक्षकाचे कार्यालय
पणजी
PANAJI

(P. V. S. Sardessai)
Inspector General
By -Order

Registration renewed till 11-06-2015
Dated 21/01/2011
21/1/2011
Inspector General of Societies/
/District Registrar (North Goa)
By Order

Office of Inspector General of Societies
संस्था महानिरीक्षकाचे कार्यालय

Registration renewed till 11-06-2020
Dated 24-09-2015
24/9/2015
Inspector General of Societies/
/District Registrar (North Goa)
By Order

Office of Inspector General of Societies
संस्था महानिरीक्षक
उत्तर गोवा, पणजी
North Goa, Panaji

Registration renewed till 11-06-2025
Dated 11-09-2020
11/09/2020
Inspector General of Societies/
/District Registrar (North Goa)
By Order

Office of Inspector General of Societies
संस्था महानिरीक्षक
उत्तर गोवा, पणजी
North Goa, Panaji

GOA
FOUNDATION

G-8, St Britto's Apartments, Feira Alta, Mapusa 403507 Goa, INDIA
Tel: +91-(0)832-2256479; 2263305 *(also fax)*
E-mail: goafoundation@gmail.com *Website:* www.goafoundation.org

Certified Copy of Resolution of the Goa Foundation

Certified that the resolution copied below was unanimously passed and adopted at the AGM of the Society held on 13.8.2021:

"This AGM hereby authorises either the President or the Secretary to approach appropriate fora including the NGT, High Court and Supreme Court in respect of the public interest matters approved for filing after discussion at the AGM held on 13th August 2021."

(Dr Claude Alvares)

Secretary

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO. 2 OF 2020

in

PILWP No.26/2017

The Goa Foundation
through its Secretary, Dr. Claude Alvares,
Having Regd. Office at
Room No 7, Above Mapusa Clinic,
Mapusa, Goa 403 507
Email id: goafoundation@gmail.com ……Petitioner

V/s

1. Shri Parimal Rai,
   Office of the Chief Secretary,
   Secretariat, Porvorim, Goa.

2. Shri Puneet Kumar Goel
   Secretary, Environment,
   c/o Secretariat, Porvorim, Goa.

3. Shri Johnson Bedy Fernandes,
   Member Secretary, GCZMA,
   With address at 1st Floor, B-Wing,
   Pandit Deendayal Upadhyay Bhavan,
   Pundalik Nagar, Alto-Porvorim, Bardez
   Goa – 403 521 ….Respondents

[NUPUR KUMAR]
Advocate for the Petitioner

NEW DELHI
Date: 05.01.2023